

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-24**  
June 29, 2007

**RE:** Does leave of absence remove conflicts of interest pertaining to employee's position?

**DECISION:** No.

This opinion is issued in response to your June 20, 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. You state that you are employed by the Department of Public Advocacy and manage a public defender's office in a local community. You are a classified (merit) employee and wish to file as a candidate for Circuit Court Judge in your local county, but do not want to leave your employment during your candidacy. However, you propose to take a leave of absence from your state position using annual, compensatory, sick, or unpaid leave time for such an absence.

You understand the constraints of KRS Chapter 18A, but you believe that any potential conflicts of interest would be rendered moot by your absence from employment during your period of candidacy. You do not plan to campaign or solicit campaign funds prior to a leave of absence. If you are successful as a candidate, you plan to terminate your employment with the Department of Public Advocacy upon certification of the election.

You ask for an advisory opinion on this matter.

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;

Further, KRS 11A.045 provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

KRS 11A.010(5) defines "gift" to mean a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; but "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public.

Any potential conflicts of interest that would exist for you as an employee of the Department of Public Advocacy would still exist for you even if you were to take a leave of absence from your employment, regardless as to whether paid or unpaid. Although your leave of absence, if granted, would allow you to abstain from certain matters and thus remove certain potential direct conflicts of interest (which you could also do even if you remained an employee), you still would be an employee and other conflicts that exist simply because of your employment with the Department would not be removed, such as accepting gifts from certain sources. Further, even during a leave of absence, any matters with which employees who are normally under your supervision are involved still may present a conflict for you since you may be returning to your position after your leave of absence.

The Commission points out, however, that campaign contributions to an employee's own campaign are not considered "gifts" if in compliance with the campaign finance laws. Thus, your campaign would not be prohibited from accepting donations from sources that might do business with, be regulated by or in some way are trying to influence the Department of Public Advocacy.

The Commission does not have jurisdiction over matters related to your actions under KRS 18A.140, quoted below, and restrictions pertaining to your classified status, and thus refers you to the Personnel Cabinet to determine if you are permitted to be a candidate for the compensated position while still an employee.

KRS 18A.140:

No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy a town or school district office if the office is one for which no compensation, other than a per diem payment, is provided and the election is on a nonpartisan basis.

Also, please find attached Advisory Opinion 98-33, which provides further guidance in a similar matter.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb

Attachment: Advisory Opinion 98-33