

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-39**  
December 14, 2007

**RE:** May employee of Division of Water be certified as a methamphetamine cleanup contractor?

**DECISION:** Yes.

This opinion is issued in response to your October 19, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 14, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You are employed by the Division of Water, Department of Environmental Protection, Environmental and Public Protection Cabinet (the "Cabinet"), at a regional office. In addition to your position with the Division of Water, you wish to be certified by the Cabinet's Division of Waste Management, also within the Department of Environmental Protection, in order to conduct methamphetamine decontamination services for inhabitable properties. Prior to becoming certified as a methamphetamine clean-up contractor, you must apply for such certification with the Division of Waste Management, and post a Surety Bond in the amount of \$50,000. You must sign and submit a performance bond that binds either the Surety Bond or Irrevocable Letter of Credit with the Cabinet, and also certify that decontamination will be performed safely in accordance with regulations, and that each cleanup conducted meets decontamination standards.

You state that the Division of Waste Management, a separate division within the Cabinet by which you are employed, is responsible for approving the certification for the cleanup contractor. It is the Commission's understanding that the Division of Waste Management also oversees and regulates the cleanup process. You ask whether a conflict of interest will exist for you to be certified as a methamphetamine cleanup contractor since you would be regulated by the Division of Waste Management within the Cabinet.

KRS 11A.020(1) and (2) provide:

- (1) No public servant, by himself or through others, shall knowingly:

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- (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;
  - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
  - (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 others in derogation of the public interest at large.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

The Division of Water, although within the Department of Environmental Protection, is not responsible for regulating or enforcing any provision of the recently enacted law requiring contractors to be certified in order to conduct methamphetamine decontamination services. Thus, it does not appear that a conflict of interest will exist for you if you are certified by the Division of Waste Management even though it is within the same Department as the division by which you are employed. Provided neither the Department of Environmental Protection, nor the Division of Water, has implemented a policy prohibiting employees from obtaining such cleanup certifications, you are not prohibited from applying to become certified as a methamphetamine cleanup contractor. As an applicant, you will be required to comply with the same standards as any other applicant for certification.

The Commission cautions you not to provide such cleanup services, however, for persons or businesses that are regulated by the Division of Water. Seeking clients for your private business that do business with or are regulated by the Division of Water could present a conflict of interest for you. Also, you should not use any state time or resources for the operation of your private business. See Advisory Opinion 96-49 enclosed for further guidance.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Vice Chair: E. Patrick Moores

Enclosure: Advisory Opinion 96-49