

Executive Branch Ethics Commission
ADVISORY OPINION 08-3
February 29, 2008

RE: May KVE officer work for attorney's office conducting investigations and serving subpoenas?

DECISION: Yes, in those matters that don't pose a conflict with his officer position.

This opinion is issued in response to your February 14, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 29, 2008 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The Department of Kentucky Vehicle Enforcement ("KVE") is responsible for the regulation and enforcement of the commercial vehicle industry in Kentucky. In accordance with KRS 15A.370, KVE also is responsible for enforcing all other state laws and administrative regulations as directed by the Governor or the Secretary of the Justice and Public Safety Cabinet. Peace officers of KVE also enforce vehicle licensure and motor vehicle operator, traffic, and criminal law violations on a highway.

You ask whether a peace officer employed by KVE may work for an attorney's office conducting investigations of motor vehicle accident cases and criminal cases. He also will be serving subpoenas in both criminal cases and motor vehicle accident cases.

KRS 11A.020(1) (a) and (2) 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;

...

(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.

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For purposes of the advice below, the Commission has assumed that KVE has no business or regulatory relationship with the attorney's office for which the officer wishes to work.

Although the Executive Branch Code of Ethics does not specifically prohibit an employee from having outside employment or a private business in addition to his or her state employment, an employee must ascertain that such outside employment or business does not present a conflict of interest between the employee's official duty for the state and his personal or private outside work or business. Specifically, in this case, the peace officer is not prohibited from accepting employment with or providing private services to an attorney's office, but must ascertain that his work for the attorney's office does not present a conflict with his official duties for KVE.

The Commission believes that the peace officer should not be involved in his officer position with matters concerning investigations or subpoenas with which he may have been involved in his private work. Similarly, he should not be involved in investigations and subpoena service in his private work if he has had involvement with such cases as a peace officer. Further, he should not identify himself as a KVE officer during his conduct of any work for the attorney's office, but should identify for whom he actually is working.

KVE is not prohibited from implementing in-house policies regarding outside work or employment that may be more restrictive than the Executive Branch Code of Ethics.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb