

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 – 3
Reverses 93-48

March 22, 1994

RE: Reconsideration of whether employee may offer continuing education courses

DECISION: Reverses 93-48 which approved offering continuing education courses

This opinion is in response to your November 24, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission). This matter was reviewed at the December 16, 1993, February 3, and March 22, 1994, meetings of the Commission, and the following opinion is issued.

You request a reconsideration of Advisory Opinion 93-48 based on additional facts concerning the initial request which you believe the Commission may not have had. In the request for Advisory Opinion 93-48, the requestor stated that upon acceptance of the position as Radon Coordinator, a legal review and opinion were sought regarding the propriety of providing continuing education courses to non-state employed X-ray technologists. You state the opinion given to her about this matter was not a legal opinion, but an opinion from her supervisor. No written opinion was ever issued by the Department of Law [then the Office of Counsel] about this matter.

An internal review of this matter revealed that the continuing education courses provided by the employee to X-ray technologists are submitted to and approved by an employee of the Radiation Producing Machines and Certification Section of the Radiation Control Branch. The Radon Program, in which the employee is involved, is also part of the Radiation Control Branch. The Department of Law within the Cabinet of Human Resources is concerned that a conflict of interest may exist when a state employer's course materials from her private business are reviewed by an individual who works in the same Branch as the employee.

Information provided the Commission from the supervisor of the Radiation Producing Machines and Certification Section and the employee responsible for approving continuing education obtained by X-ray technologists, confirms the statement made in the initial request that the employee has no responsibilities or interaction with that section of the Radiation Control Branch. However, the Radon Coordinator works directly across the hall from the employee responsible for approving the continuing education classes which the Coordinator offers in a private business. X-ray technologists must obtain 18 hours of continuing education every two years to retain their license.

KRS 11A.005(1)(a) and (d) provide:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;
- (d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(a) through (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;

(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.

Based on new information the Commission has received concerning this opinion, the Commission believes the employer's outside job does appear to present a conflict of interest with duties in the public interest. The public may view the fact that continuing education courses offered by the Radon Coordinator's private business which are approved by the same branch in which the Radon Coordinator is employed gives an advantage to the Radon Coordinator.

Therefore, the Commission reverses its decision issued in Advisory Opinion 93-48. The Radon Coordinator may not continue to offer continuing education courses to X-ray technologists.

Additionally, the Commission believes other state employees who offer other professional continuing education classes on personal time should not do so if the department where they are employed has approval authority over such courses to be offered.