

ADVISORY OPINION 94 - 6

February 3, 1994

RE: May employee retain part-time employment at hospital which holds contract with state agency?

DECISION: No.

This opinion is in response to your December 20, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 3, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as a social work supervisor within the Department of Social Services ("DSS") of the Cabinet for Human Resources. You are also employed part-time by Our Lady of Peace Hospital as an admissions clinician, and, as such, assess persons for admission to the hospital.

The Cabinet for Human Resources has a contract with Our Lady of Peace Hospital. As part of this contract, the DSS uses state funds to pay for children or adolescents who are committed to the hospital and no longer are eligible to receive Medicaid funds. You have no influence over the placement of DSS-committed children to the hospital, and thus, believe your employment situation does not present a conflict of interest.

KRS 11A.020(1)(a) and 11A.040(4) 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;

(4) No public servant shall 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, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

In Advisory Opinion 93-40 (a copy of which is enclosed), the Commission concluded that a state employee may not work on a part-time basis for an outside agency if the private agency has a contract with the state agency for which the employee works (unless the contract is for the receipt of entitlement funds). The funds provided to Our Lady of Peace as a result of the contract with DSS are not entitlement funds.

Therefore, the Commission believes you may not work part-time for Our Lady of Peace hospital while employed by the Cabinet for Human Resources. However, well intentioned, dual employment such as yours creates a perception that a state employee may not be impartial in carrying out state duties that affect the outside employer or persons receiving service from both the state and the outside employer.