

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 12

March 22, 1994

RE: May public servants be employed by comprehensive care centers?

DECISION: Yes

This opinion is in response to your January 26, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 3 and March 22, 1994, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. Private part-time employment of physicians employed by the Department for Mental Health and Mental Retardation of the Cabinet for Human Resources is guided by KRS 210.120 which provides:

No physician or doctor employed by the cabinet for human resources shall receive or accept any compensation for personal services other than that paid by the state, except that the secretary, and other physicians and doctors when so authorized by the secretary, may be employed in, and receive compensation from outside activities such as teaching, research, or community service work, to an extent that will not interfere with the performance of their office or employment.

The Department of Law within the Cabinet for Human Resources received a request from the Acting Commissioner of the Department for Mental Health and Mental Retardation (the "Department") asking whether KRS 210.120 permits physicians employed by the Department to continue to provide therapy to patients on a part-time basis at comprehensive care centers in light of Advisory Opinion 93-40 issued by the Commission.

Comprehensive care centers are governed by regional boards provided for in KRS 210.370 and KRS 210.380. The regional boards are nonprofit corporations. The operations and budgets of the Boards are subject to the policies and regulations of the Cabinet for Human Resources (the "Cabinet") pursuant to KRS 210.400 and KRS 210.440. KRS 210.400(1) requires each board to report to the Secretary of the Cabinet on the review and evaluation of services provided by the comprehensive care center.

In addition, the Secretary of the Cabinet has additional powers over the Boards as described in KRS 210.450(1). As such, the Secretary of the Cabinet is authorized to develop policies and regulations governing eligibility of community mental health and mental retardation programs to receive state grants and other funding from the Cabinet.

Although a decision by the Kentucky Court of Appeals and several opinions of the Attorney General conclude that regional mental health-mental retardation boards are not state agencies, other opinions of the Attorney General have concluded that the regional boards that administer comprehensive care centers are in effect public bodies. OAG 70-466 states that boards "are in effect public boards, and that funds which these boards provide to the Bureau for Rehabilitation for regional mental health services programs are public funds." In OAG 73-203, the Attorney General concluded that such boards "clearly are instrumentalities of the Commonwealth and therefore are political subdivisions for purposes of KRS 61.240."

Employees of the some of the regional boards legally participate in the Kentucky Employees Retirement System pursuant to KRS 61.520 and Executive Orders 66-378 and 69-667.

The Department of Law believes that as long as the part-time employment is approved by the Secretary of the Cabinet for Human Resources as provided in KRS 210.120, it is not a violation of the Executive

Branch Code of Ethics. The Department of Law asks the Commission for an opinion *regarding the effect of KRS 210.120 on the Executive Branch Code of Ethics as it relates to part-time employment of Cabinet physicians. Specifically, you ask for an opinion as to the propriety of physicians, employed full-time by the Cabinet at one of its psychiatric hospitals or mental retardation facilities, working part-time for a comprehensive care center.*

In Advisory Opinion 93-40, the Commission concluded that a state employee could not work part-time for an outside agency if the private agency receives funding from the state agency where the employee works.

Mental health-mental retardation programs conducted by comprehensive care centers are, in practice, part of the programs authorized by statute and conducted by the Department of Mental Health-Mental Retardation, and the Commission believes employment of public servants in comprehensive care centers does not constitute outside employment. Therefore, the Commission believes AO 93-40 is not applicable.

The Commission believes state employees may be employed at comprehensive care centers, provided such employees take no part in contract negotiations between the Cabinet for Human Resources and the comprehensive care centers, and their part-time employment is approved by the Cabinet secretary.