

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 94 - 18      *REPLACING 94 - 9*

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March 22, 1994

RE:                    May employee of Department for Environmental Protection serve as a consultant for a private environmental engineering firm?

DECISION:        Yes, if firm or client served is not regulated by or doing business with the Department.

This letter is in response to your January 14, 1994, request for an advisory opinion from the Executive Branch Ethics Commission ("Commission"). This matter was reviewed at the February 3, 1994, meeting of the Commission, and the following opinion is issued.

The relevant facts provided the Commission are as follows. You are employed as an environmental inspector in the Frankfort regional office of the Division of Air Quality within the Natural Resources and Environmental Protection Cabinet. Your division is ultimately responsible for the enforcement of air quality regulation in all counties in Kentucky, even though day-to-day enforcement in Jefferson County is handled by the Jefferson County Pollution Control District.

An environmental engineering firm that is not directly regulated by your cabinet has asked you to perform occasional consulting services for work in Jefferson County and Southern Indiana. The work assigned to you would be for one of the firm's clients not subject to environmental regulation by the Department for Environmental Protection.

KRS 11A.005(1)(a) and (c) provides:

(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;

In addition, KRS 020(1)(a) and (c) 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;

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

From the information provided to the Commission, it appears, that the private firm which has offered you employment is neither regulated by nor does business with the state agency where you are employed. Additionally, the environmental engineering firm's client, to whom you will be providing consulting services, is not regulated the Department for Environmental Protection.

You may accept employment with the private firm as long as it and the client to whom you will be providing the services is not regulated by or doing business with the Department for Environmental Protection. If

the client's operations in Jefferson County are regulated by the Department, you should not accept the employment.

Additionally, the Commission assumes from your statement that you have not used your official position to obtain private benefits. However, if you used your state position as an inducement to the private firm in order to be offered the employment, then you are prohibited from accepting the position.