

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-7

March 23, 1995

RE: May employee provide fitness instruction through outside entity to state agency located on same grounds as agency for which the employee works?

DECISION: Yes.

This opinion is in response to your February 28, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 23, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as a senior rehabilitation instructor for the Department of Vocational Rehabilitation within the Workforce Development Cabinet (the "Department"). Your office is located on the grounds of Eastern State Hospital, but is not located within the same building as the hospital. Your job responsibilities include teaching classes to clients of the Department who may have been formerly hospitalized at Eastern State Hospital. You were formerly employed by Eastern State Hospital from 1985-1987 as an institutional recreation leader. In addition to your state employment, you are employed by a fitness center as an instructor assistant. As of April 23, 1995, you will become a certified Jazzercise[®] instructor and franchise owner, and will be employed as a private contractor by the fitness center.

The fitness center submitted a proposal to Eastern State Hospital to provide fitness classes to state employees, beginning May 1, 1995. You have been offered a contract by the fitness center to provide the instruction at this location, if the proposal is accepted by Eastern State Hospital. You are acquainted with employees from Eastern State Hospital through your former employment there. You would like an opinion as to whether this arrangement would present a conflict of interest under the Executive Branch Code of Ethics (the "Code").

KRS 11A.040(4) provides:

(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.

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If you will be acting as an employee of, or contractor with, the fitness center, do not own more than five percent (5%) of the fitness center, and are not a party to the contract between the fitness center and Eastern State Hospital, then the Commission believes the Ethics Code does not prohibit your instructing the new class at Eastern State.

KRS 11A.040(9) provides:

(9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

You are employed by a department within the Workforce Development Cabinet, whereas the fitness center is seeking a contract with Eastern State Hospital, part of the Human Resources Cabinet. Thus, you would not be accepting outside employment from a business which does business with the state agency for which you work. We believe the fact that your work sites are on the grounds of Eastern State Hospital is not sufficient to create a conflict of interest.

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By: Livingston Taylor, Chairman