

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 95-40
October 19, 1995

RE: May exception to the code of ethics be made for interpreters for the deaf?

DECISION: No, however dual employment may be sought.

This opinion is in response to your September 20, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You represent employees of the Department of Technical Education within the Workforce Development Cabinet who also are interpreters for the deaf and are concerned about the ethical considerations of state employees who "moonlight" at other jobs.

The need for interpreters in the workplace continues to increase, yet there are very few interpreters in Kentucky. Interpreters who are also state employees are frequently requested, usually on short notice, to provide interpreting services for private entities and for other state agencies, including the Commission for the Deaf and Hard of Hearing. Some of the private entities requesting these services do business with the agency for which the employee works. Some requests from state agencies are for services to be performed during the weekday, even though the employee is prohibited from providing the service. You question why agencies request state employees' services when acceptance by the employees would be an ethical violation.

You are aware that in order to avoid a conflict of interest, or the appearance of one, state employees are prohibited from having a contract or an agreement with any state agency; however, you wish to know how to meet the urgent need to accommodate deaf and hard of hearing citizens, particularly in light of the Americans with Disabilities Act, and not subject employees to charges of ethics violations. You request that, in light of this obvious need, an exception to the ethics code be provided for those employees who provide such interpreting services.

The Executive Branch Code of Ethics, in KRS 11A.040(4) provided below, prohibits an employee from having a contract or agreement with any state agency.

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KRS 11A.040(4) Acts prohibited for public servant.

(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.

Thus, employees of the Department of Technical Education are prohibited from having an agreement to provide interpreting services for another state agency. Although the Commission sympathizes with the urgent need for interpreting services, we have no authority to allow exceptions to the law.

Such employees may want to seek a solution to this problem through "dual employment." The Commission points out that the code of ethics does not prohibit employees from dual employment within the executive branch. However, administrative regulation 101 KAR 2:095 does require approval for dual employment as stated below:

Section 3. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

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BY: Martin J. Huelsmann, Chairman