

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 95-42**  
December 19, 1995

RE: May state employee receive specialized telecommunications equipment under state distribution program?

DECISION: Yes, as long as not involved in decisions concerning the distribution of TDDs

This opinion is in response to your October 9, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. Kentucky Revised Statute (KRS) 163.525 required the Commission on the Deaf and Hard of Hearing to establish a program by July 1, 1995, to distribute "telecommunications devices for the deaf" ("TDDs") to any person who is a Kentucky resident, is at least five years old, and is certified as deaf, hard of hearing, or severely speech impaired by a licensed physician, audiologist, speech pathologist, or by any other method recognized by the Commission on the Deaf and Hard of Hearing. The purpose of the program is to provide deaf and hard of hearing consumers equal access to telecommunications. The Commission on the Deaf and Hard of Hearing is authorized by statute to prioritize distribution of TDDs based on need. However, administrative regulation 735 KAR 1:010 requires TDDs to be distributed on a nondiscriminatory, first-come, first- served basis.

There are several state employees who are deaf and hard of hearing and who would benefit from this program. You ask if it is appropriate according to the Executive Branch Code of Ethics for a state employee, commission member of the Commission on the Deaf and Hard of Hearing, or person who has a personal service contract with the state to apply for a TDD. Other states you have surveyed provide distribution of such devices to any person who is eligible, regardless of whether they are state employees.

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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In addition, KRS 11A.020(1)(a) provides:

- (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;

State employees are prohibited by the provisions above from having any type of contract or agreement with any state agency unless such agreement is distributed through an entitlement program. Although distribution of TDDs is not considered an entitlement, the Commission does not believe application for a TDD by a state employee is considered a contract or agreement with a state agency. TDDs are available by law to those persons who meet certain criteria. Because TDDs are distributed on a first-come, first-served basis to those persons who are objectively certified, the Commission believes it is permissible for a state employee to apply for and receive a TDD.

The Commission concluded in Advisory Opinion 93-53 (a copy of which is enclosed) that board and commission members are not considered public servants and thus are not subject to the provisions of KRS Chapter 11A. Likewise, the Commission, in Advisory Opinions 93-71 and 93-91 (copies of which are enclosed), held that physicians and attorneys who contract with the state to provide services on a limited basis are not considered employees in the executive branch and are not public servants subject to the ethics code. Therefore, a member of the Commission on Deaf and Hard of Hearing or a person who holds a personal service contract to provide services on a limited basis to a state agency is not prohibited by the ethics code from applying for specialized TDD equipment.

However, if distributions of TDDs are made on a basis other than first-come, first-served, and an employee or commission member is directly involved in his official duty in decisions concerning the distribution of such equipment, a personal conflict may exist between his private interest and his duties in the public interest. In that case, an employee should not apply for a TDD unless he refrains from involvement in such decisions. Similarly, a commission member, although not subject to the ethics code, would be advised to refrain from such decisions, also.

EXECUTIVE BRANCH ETHICS COMMISSION

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BY: Martin J. Huelsmann, Chairman

Enclosure: AO 93-53  
AO 93-71  
AO 93-91