

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-45

December 19, 1995

RE: May employees work part-time for private industries which may be provided services by employees' agency?

DECISION: Yes, within limitations.

This opinion is in response to your October 24, 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. The Kentucky Advanced Technology Center ("KATC") is a training institution within the Department of Technical Education ("KY Tech") of the WorkForce Development Cabinet. KATC trains adults in areas such as automation, robotics, computers and electronics. KATC seeks to meet the needs of business and industry by providing classes on technical issues, the cost of which is reimbursed by the business or industry.

In past years, KATC teachers have developed and provided training classes on their own time for outside entities which may or may not receive services from KATC. Many of these entities have established close working relationships with KATC and have sought the services of KATC as a result of teachers initially providing services on their own time for these companies. It has been KATC policy to encourage KATC faculty to work part-time for businesses and industries, subject to administrative approval. You believe such involvement enhances the goal of KATC. In addition, faculty members have no regulatory authority or funding decision authority over industries for which they may work privately.

You ask whether it is a violation of the Executive Branch Code of Ethics for faculty members to provide, on their own time, consulting or training services for private businesses or industries which may also be customers or potential customers of KATC.

KRS 11A.020(1)(c) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - ...
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

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The Commission believes that the code of ethics does not prohibit employees from accepting outside employment as consultants or trainers with businesses which may be potential customers of KATC. However, in Advisory Opinion 94-57 (a copy of which is enclosed), the Commission concluded that an employee of the WorkForce Development Cabinet should not offer classes in his private business which were offered to students by the local KY Tech campus in his area. Similarly, the Commission believes that employees should not provide to businesses classes which are currently offered by KATC at their local KY Tech campus.

In addition, employees should take great care not to use their state job to benefit their private business. Specifically, employees should not identify their state positions on private business cards or advertisements which may be distributed. Private business matters should not be conducted by employees during normal business hours when an employee is expected to be on "state time," or through the use of state equipment or resources.

Finally, if the WorkForce Development Cabinet does do business with or has a regulatory relationship with an outside business for which an employee wishes to provide private services, the employee should seek approval from the Commission as provided in KRS 11A.040(9) below:

(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.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: MARTIN J. HUELSMANN, CHAIRMAN

Enclosure: AO 94-57