

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-18
May 14, 1996

RE: Does employee's outside employment present a conflict under the code of ethics?

DECISION: No, if approved by the Commission.

This opinion is in response to your March 29, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 14, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Mineral Assessment Compliance Branch, Division of Technical Support, Department of Property Taxation, within the Revenue Cabinet is responsible for reviewing assessments of properties owned or controlled by coal companies, which are submitted for property tax purposes. Employees of the Division who are involved in the review of such assessments may recommend, based on their review, that an audit be conducted for a coal company for which they perceive an irregularity in the assessment of the company's taxable value of mineral rights.

One employee of the Division, an auditor involved in the review and audit of the coal company assessments, wishes to perform engineering consulting work for coal companies doing business outside Kentucky which may have an interest in properties within Kentucky. You state that the employee has agreed to inform his supervisor and refrain from participating in audits of companies for which he has performed private work during the past five years.

KRS 11A.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.

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Additionally, 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.

The Commission believes that, as long as the employee does not perform consulting work for coal companies with an interest in property in Kentucky which would be subject to assessment by the employee's division, the outside employment would not present a conflict of interest. However, the employee should not review or be involved in audits of coal companies which are in competition with the company for which the employee wishes to work privately.

If the coal companies have any property within the Commonwealth that may be reviewed or audited by the division for which the employee works, such outside employment could pose a conflict of interest for the employee. KRS 11A.040(9), provided above, requires that an employee who wishes to obtain employment with an entity which is regulated by the agency for which the employee works must obtain approval from the Commission.

In addition, the Commission has adopted the attached policy, *Approval Policy and Monitoring Procedure for Outside Employment of Auditors, Inspectors, and Other Regulatory Personnel*, which provides that an auditor may have outside employment with an entity that is subject to audit by the agency for which he works, provided that the entity for which the employee wishes to work is not currently being audited, nor is scheduled for an audit during the current fiscal year, and no other conflict exists.

Accordingly, if a business or regulatory relationship exists between the coal companies for which the employee wishes to work and the Revenue Cabinet, the employee should submit a request for outside employment to the Commission, pursuant to KRS 11A.040(9) and 9 KAR 1:050 (a copy of which is enclosed).

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Ruth H. Baxter, Chair

Enclosure