

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-28

July 2, 1998

RE: May an employee sell a program to the agency for which he works?

DECISION: No.

This opinion is in response to your June 3, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 2, 1996, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Kentucky Board of Pharmacy (the "Board") developed an AIDS/HIV continuing education program on his own time. The Board has agreed to pay the employee \$500.00 for producing the program and answer sheet. The Board staff is responsible for copying, mailing, grading, and printing of the certificate of completion of the program, and all fees for participation in the program are collected and deposited in the Board's account. The employee does not receive any of the fees charged by the Board for the program. The Board believes the program will benefit the agency and practicing pharmacists.

KRS 11A.040(4) states:

(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 section was amended by Senate Bill 361, effective July 15, 1996, to read:

(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 **the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340** [any state agency.]

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Under both the current law and the amendment, a public servant is prohibited from having any agreement with his employing agency. The Commission believes that the employee may not accept payment for the continuing education program from the Board, as this would constitute an agreement with his employing agency to purchase his program, in violation of KRS 11A.040(4). The employee should immediately reimburse the Board, if any payment was made to him, and provide documentation of this to the Commission.

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BY: Ruth H. Baxter, Chair