

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-38
October 29, 1996

RE: May employee subcontract with a professional service corporation which holds a personal service contract with the agency for which the employee works?

DECISION: No, if employee will be "enjoying" part of the contract.

This opinion is in response to your July 8, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 5, and October 29, 1996, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. A prison dentist employed by the Department of Corrections at a correctional facility wishes to subcontract with a professional service corporation ("PSC") which holds a contract with the Department of Corrections to provide dental services. The employee has no ownership interest in the PSC.

The employee, as part of the subcontract, would provide dental services at a facility other than the one for which he is employed. Such services would be provided during the employee's off-duty hours. You ask whether the employee may enter into this contract, and if so, is there a distinction as to whether the services provided by the PSC are provided for the agency for which the employee works or another state agency.

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 the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.

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The Commission believes that if the employee subcontracts with a PSC which holds a personal service contract with the agency for which the employee works, and the employee performs a service which is a part of that contract, that the employee will be "enjoying" a part of the contract made with the agency by which the employee is employed. Accordingly, the Commission advises the employee not to subcontract to provide a service which is part of the contract with the agency for which he is employed.

The employee is not prohibited from subcontracting with a PSC to provide a service as part of that PSC's personal service contract with another state agency as long as the said contract is in compliance with the Model Procurement Code in KRS 45A.340.

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BY: Ruth H. Baxter, Chair