

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-49
December 17, 1996

RE: May Department of Corrections employee, on his own time, train individuals for the carrying of a concealed weapon?

DECISION: Yes, within limitations.

This opinion is in response to your October 22, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1996, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Corrections (the "Department") within the Justice Cabinet as a lieutenant and firearms instructor. As part of your official duty, you are responsible for training and recertifying Department employees in the use of firearms for performance of their duties as correctional officers. This training is conducted once per year, and you train approximately 150 employees.

Recently, on your own time and not as part of your official duty, you attended a training class conducted by the Department of Criminal Justice Training, also within the Justice Cabinet. This class certified you as a trainer for instruction on the carrying of a concealed deadly weapon. Although you do not believe your private training business will present a conflict of interest with your official duties, you have received conflicting advice on this matter from your Department. A representative of the Department's Office of Corrections Training has informed you that it will present a conflict of interest for you to charge a fee to Department employees to attend a class, even if you provide the class on your own time and expense. However, the Department's General Counsel believes such training provided by you will not present a conflict as long as the instruction for which you were certified was obtained on your own time and with your own funds.

You do not believe that the instruction you plan to provide will have any impact on your position as a firearms instructor for the Department. You ask whether a conflict of interest will exist for you by your conduct of such private instruction.

KRS 11A.020(1) and (2) 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

The Department of Criminal Justice Training is authorized to instruct and certify instructors to provide training for applicants who wish to be licensed to carry concealed weapons. The Department of State Police within the Justice Cabinet is charged with the responsibility of issuing licenses to individuals who wish to carry concealed weapons. Further, the Department of State Police is empowered to deny applications of individuals who do not meet the statutory qualifications. As both the Department of Criminal Justice Training and the Department of State Police are responsible for the regulation and enforcement of the concealed weapon law, both departments have implemented policies prohibiting their employees from obtaining certifications as instructors of training for applicants who wish to carry concealed weapons.

The Department of Corrections, although within the Justice Cabinet, is not responsible for regulating or enforcing any provision of the recently enacted law allowing individuals to carry concealed weapons. Thus, the Commission believes that, as an employee of the Department, you are not prohibited from obtaining training and certification from the Department of Criminal Justice Training to train applicants who wish to obtain a license to carry a concealed weapon. However, the Commission cautions you not to provide this training to employees of your agency who are trained or recertified by you in the use of firearms, as a part of your official duty. Seeking clients over whom you have regulatory authority in your state employment could present a conflict of interest for you. In addition, you should not seek clients for your business who do business with, seek to do business with, or are under the regulatory control of the Department of Corrections.

Additionally, Kentucky Administrative Regulation 503 KAR 4:050, Section 9, provides:

A certified firearms instructor shall:

- (1) Allow monitoring of his class by the department or by an official of another agency approved by the department;
- (2) Make all course records available upon demand to authorized personnel of the department; and
- (3) Not divulge course records except as authorized by the department.

As provided above, your private business will be subject to monitoring by the Department of Criminal Justice Training or by an official of another agency approved by the Department of Criminal Justice Training. The Commission believes that you may operate your

private business as long as your business is not monitored by an official of the Department of Corrections. In addition, you should not be involved, as part of your official duty, with any matters concerning the concealed weapons law or your private business. Furthermore, you should not use any state time or equipment for the operation of your private business.

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BY: Ruth H. Baxter, Chair