

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 96-50**

December 17, 1996

RE: May employee of the Office of the Attorney General provide training on the carrying of a concealed weapon?

DECISION: Yes, within limitations

This opinion is in response to your October 29, 1996 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission") and is also in response to the request for approval of outside employment for an employee within the division which you supervise. 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. An investigative supervisor within the Special Investigations Division of the Office of the Attorney General ("OAG") wishes to engage in self-employment as a certified firearms instructor. He has received training and certification from the Department of Criminal Justice Training within the Justice Cabinet to train persons to carry concealed deadly weapons.

You are concerned about the potential conflict of the investigative supervisor's responsibility as peace officer to enforce KRS 527.020, in addition to his self-employment. Additionally, you ask whether such self-employment by the investigative supervisor would be considered dual employment under 101 KAR 2:095, Section 3. Further, you believe that the investigative supervisor should comply with the following restrictions/obligations if he does engage in such self-employment:

- 1) The Office of the Attorney General must be notified of the name and date of birth of applicants requesting to carry concealed deadly weapons at least two weeks in advance of scheduled training in order to determine if applicants are involved in any investigation, prosecution, or other actions involving the Attorney General's Office; and
- 2) The Office of the Attorney General should have a waiver signed by the investigative supervisor agreeing to not use OAG equipment or materials for training applicants. The waiver should also include an agreement to not act as an agent of OAG or represent OAG in training applicants.

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.

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.

The Commission believes that, as an employee of the Office of the Attorney General, the investigative supervisor is 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 him not to provide this training to persons who may be involved in any investigations, prosecution, or other actions involving the Office of the Attorney General. Further, he should not seek clients for his business who do business with, seek to do business with, or are under the regulatory control of the Attorney General's Office.

As provided above, his 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 he may operate his private business as long as his business is not monitored by an official of the Office of the Attorney General. In addition, he should not be involved, as part of his official duty, with any matters concerning the concealed weapons law or his private business. Furthermore, he should not use any state time or equipment for the operation of his private business.

Although he is authorized as a peace officer within the Commonwealth, the Commission believes that it is not a part of the investigative supervisor's official duty to enforce the concealed weapons law, and therefore, he is not prohibited from operating his private business, within the above stated limitations. However, the Commission has no objection to the Office of the Attorney General implementing internal policies requiring certain restrictions on its employees' outside or self-employment in order to prevent any conflicts of interest from occurring.

The Commission refers you to the Personnel Cabinet concerning your question as to

whether the investigative supervisor's self-employment, in addition to his full-time position, constitutes dual employment under 101 KAR 2:095.

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BY: Ruth H. Baxter, Chair