

ADVISORY OPINION 97-4

February 4, 1997

RE: May employee with Cabinet for Natural Resources and Environmental Protection start business monitoring indoor air quality and performing environmental consultations?

DECISION: Yes, within limitations.

This opinion is in response to your December 8, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 4, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as Environmental Inspectors with the Cabinet with the Cabinet for Natural Resources and Environmental Protection, Division for Air Quality (the "Cabinet"). In addition, you are planning to start a business where you will be conducting residential and small business indoor air quality monitoring and out of state environmental consultations. The Cabinet does not regulate indoor air quality. You ask whether your current business plans will be in conflict with the Executive Branch Code of Ethics.

KRS 11A.020(1)(a) provides:

- (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;

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...

The Commission believes you are free to perform services, in your private business, for entities which are not doing or seeking to do business with, and are not regulated by, the state agency for which you work. Thus, you may perform consulting work for businesses, in state or out of state, which are not doing or seeking to do business with the Cabinet for Human Resources.

The Commission does believe that a potential conflict of interest may exist if you provide consulting services to companies which may seek permits from the Cabinet for Natural Resources. If this or any other potential conflict of interest does exist, you should seek the Commission's approval of any outside employment as required by 9 KAR 1:050 (a copy of which is enclosed) provided that you and your appointing authority state in writing that you are not in a position to influence any Cabinet decision concerning the company.

In addition, the Commission believes that a potential for a conflict of interest may exist if, as part of your official duties, you review businesses which are in competition with your business.

Enclosure: 9 KAR 1:050