

## ADVISORY OPINION 97-6

February 4, 1997

RE: May employees of the Department of corrections provide private mental health services to probated/paroled offenders?

DECISION: No, if referred by the Department.

This opinion is in response to your December 11, 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 a career state employee of the Justice Cabinet, Department of Corrections, Division of Mental Health. Your official position involves operating a community sex offender treatment program (the "Program") at the Louisville Probation and Parole Office. This Program provides mental health services for adjudicated felons in the community who are on active probation/parole supervision. Although misdemeanor offenders are occasionally referred for treatment, because they are not subject to the sex offender law (KRS 197.210), are serving sentences of two years or less, and are not on active probation/parole supervision, they are referred to private treatment providers. You ask whether you may engage in private practice treating misdemeanor sex offenders who are not subject to the sex offender law and who are not supervised by a probation or parole officer. Additionally, you ask whether you may engage privately in treating probationers and parolees under community supervision with the Department of Corrections who are non-sex offenders. You wish to avoid any conflict of interest and inquire whether Department of Corrections employees may provide any private mental health practice to probated or paroled offenders.

KRS 11A.005(1)(a) and 11A.020(1)(a) provide:

**11A.005 Statement of public policy.**

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;

**11A.020 Public servant prohibited from certain conduct -- Disclosure of personal or private interest.**

(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;

Although the Commission believes that you are not prohibited from engaging in a private part-time practice of treating misdemeanor sex offenders, the Commission sees a potential for

conflict between your private business and your official position with the Department of Corrections if such offenders are referred to you, privately, by the Department of Corrections or if such offenders have been treated by you as a part of your official duty. Consequently, as an employee of the Department of Corrections, you should not provide private mental health services to probated/paroled offenders if such offenders are referred to you private business by the Department of Corrections or if you have been involved in the treatment of the offender as part of your official duty.

Additionally, you should not be involved, as part of your official duty, in decisions concerning referrals of individuals to entities which could be in competition with your private business. If you are involved, as a part of your official duty, in referrals to private treatment providers, then you should not engage in a private practice which would be in competition with such providers.