

ADVISORY OPINION 97-13

May 13, 1997

- RE: 1) Does client of employee's private accounting business present a conflict of interest for employee?
- 2) May Medicaid auditor remain a school board member if the school board becomes a Medicaid provider and submits claims for payment?
- DECISION: 1) No.
- 2) Yes, with restrictions.

This opinion is in response to your March 24, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 13, 1997, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as a reviewer for the Division of Audits within the Cabinet for Health Services. The Division of Audit's primary function is to audit health-care related service providers who receive reimbursement from the Department of Medicaid Services (the "Department") for services provided within the guidelines of the Medical Assistance Program ("Medicaid"). Based on the results of the audits, the Division of Audits recommends adjustments according to the Medicaid guidelines. You have questions concerning two situations relative to conflicts between your official position and your outside interests.

You provide the following information concerning the first situation. In addition to your state employment, you own and operate an accounting firm which has a wide variety of clients. Only one of your clients, a counseling business, is in the medical field. Although your client is approved as a Medicaid provider, a representative of the business has signed a statement asserting that the client has not sought reimbursement from the Department for services provided, nor does it intend to seek reimbursement in the future. The client has also agreed to contact you immediately if it ever does seek reimbursement from the Department.

You state that your client must be a psychiatrist in order to seek reimbursement for Medicaid services and your client is not. However, your client does employ psychiatrists who, in providing counseling services at nursing homes for your client, will seek reimbursement from the Department under their own names and provider numbers. Your client receives no Medicaid reimbursements as the Department reimburses the psychiatrists directly, and, according to the Department, any liability for payments are that of the psychiatrists.

Although your client does bill for Medicare reimbursements, any crossover billings for co-insurance by Medicaid are handled strictly by Medicare. You have requested and reviewed the Department's billing history for your client in order to verify that your client has never billed Medicaid directly or been paid through a crossover claim from Medicare.

You inquire as to whether the above situation presents a conflict of interest for you. In addition, you ask whether you would be in violation of the code of ethics if your client did begin

to seek reimbursement for Medicaid services.

You provide the relevant facts of the second situation as follows. You also are a member of a local school board. The local school system is considering applying to become a Medicaid provider. You ask whether you will be required to resign from the school board if the school system submits claims for Medicaid reimbursement.

KRS 11A.020(1) 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;
 - (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.

Because your client does not receive Medicaid payments and thus is not subject to review by the Division of Audits, it does not appear that a conflict of interest exists between your private business and your duties in the public interest. Although employees of your client seek reimbursement from Medicaid, because you are not compensated by these employees, a conflict is not apparent.

If your client were to bill Medicaid for reimbursement, and thus become subject to review by your Division, you should refrain from any involvement, as part of your official duty, in the audit or review of your client. Additionally, you should not discuss matters concerning your client or the audit with your co-workers.

Also, Advisory Opinion 95-39, issued by the Commission on October 19, 1995, states that auditors must refrain from outside employment which presents a conflict between their private interest and their duties in the public interest. Specifically, an auditor should not audit businesses which are in competition with his business or a business for which he works. Thus, you are advised to take care not to be involved in reviews or audits of entities which might be in competition with your private business or a business from which you receive compensation.

Concerning your second request, the Commission believes that as long as you are not involved, as part of your official duty, in reviews or audits of the school board on which you serve, you would not be required to resign your position on the school board, if it were to become a Medicaid provider. The Commission does not believe that the school board is an entity that would be in competition with other entities you might review.