

## ADVISORY OPINION 97-15

May 13, 1997

RE: May inspector hold part-time position with county government which is regulated by the employee's state agency?

DECISION: Yes, upon approval from the Commission.

This opinion is in response to your April 15, 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 an inspector with the Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet. In addition, you are interested in obtaining a part-time position as solid-waste coordinator with Spencer County. In this part-time position, you will be responsible for the development and implementation of the county's solid waste plan consisting of methods of garbage collection, recycling and community education for county residents. Spencer County's solid waste procedures are regulated by the Division of Waste Management which is also a part of the Department for Environmental Protection.

As part of your official duties for the state, you inspect air pollutant sources and determine the compliance status of these sources for an 18-county region. You also investigate citizen complaints related to air pollutants in that region. Spencer County is one of the counties within the region that you regulate. Currently, there are four permitted air pollutant sources in Spencer County which are non-government entities. The Division for Air Quality does not inspect or regulate Spencer County government, for which you wish to work, unless a complaint is received regarding a violation by the county of the "open burning regulations" in 401 KAR 63:005.

Furthermore, the Division of Air Quality for which you work does not regulate solid waste procedures, although such procedures are regulated by the Division of Waste Management, a part of the state agency for which you work. Thus, you ask whether your acceptance of such part-time employment presents a conflict of interest.

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;

Also, KRS 11A.040(9) provides:

(9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

The Commission believes that you may accept outside employment with Spencer County government as a solid waste coordinator provided that Spencer County government is not subject to regulation by the Division of Air Quality, and you obtain approval for such employment from the Commission. Regulation of the solid waste for Spencer County by the Division of Waste Management does not appear to present a conflict of interest for you because you state that as part of your official duty, neither you, nor your coworkers, have any involvement in matters regarding the waste management of Spencer County.

Although such employment doesn't appear to present a conflict of interest as long as neither you, nor your co-workers, are involved in official matters concerning the Spencer County government, and you do not represent the Spencer County government before the Division of Air Quality, you are still required to obtain approval for such employment pursuant to 11A.040(9) and 9 KAR 1:050 (a copy of which is enclosed), because the state agency for which you work regulates Spencer County. Furthermore, because you are employed as an inspector, you must comply with the attached policy, *Approval Policy and Monitoring Procedure for Outside Employment of Auditors, Inspectors and Other Regulatory Personnel*, which has been adopted by the Commission.

If the Division of Air Quality were to receive a complaint concerning a potential violation of the air quality regulations by the Spencer County government, you would need to terminate your outside employment with Spencer County in order to avoid a potential conflict of interest.

Enclosures: 9 KAR 1:050  
*Approval Policy and Monitoring Procedure for Outside Employment of Auditors, Inspectors and Other Regulatory Personnel*