

ADVISORY OPINION 97-20

October 7, 1997

RE: May forester provide arboricultural services to cities?

DECISION: Yes, as long as forester has no involvement with city as part of his official duty.

This opinion is in response to your August 15, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 7, 1997, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. An employee who works as a forester in the Division of Forestry, Department of Natural Resources, Natural Resources and Environmental Protection Cabinet (the "Division"), wishes to provide services in the area of arboriculture to various cities. The Division of Forestry provides technical assistance to communities in the state through its Urban and Community Forestry Program, but the Division does not provide labor for cutting, pruning or planing trees. You request an opinion from the Commission as to whether the employee may provide such services.

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.

The employee is not prohibited from providing arboricultural services to cities provided he has no direct involvement as part of his official duty with the cities for which he wishes to provide the service. However, if the employee is involved in any way, as a part of his official duty, in providing even technical assistance to a city, he should not accept compensation for his services. The Commission believes that such outside employment or contracting would present the appearance of a conflict for the employee if not an actual conflict.

Additionally, the employee should not use his position in any way to secure private business from cities, and he should not provide services to any cities which may have been referred to him by his coworkers.

Furthermore, if the Natural Resources and Environmental Protection Cabinet has regulatory authority over cities in any matter, the employee is required to obtain approval from the Commission for his outside employment with a city, pursuant to KRS 11A.040(9), stated below, and 9 KAR 1:050 (a copy of which is enclosed).

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.