

ADVISORY OPINION 97-27

December 16, 1997

RE: May employees market products to entities outside the Commonwealth of Kentucky?

DECISION: Not if involved in marketing to or reviewing the work of entities with which they may be in competition privately.

This opinion is in response to your November 13, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 16, 1997, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Two employees of the Department of Corrections, the Director of the Division of Local Facilities and the Construction Program Administrator, propose to incorporate a business manufacturing and/or distributing component parts of ventilation systems used in secure facilities. The employees do not plan to sell, market, or distribute their product to secure facilities within the Commonwealth of Kentucky or directly to the Commonwealth or any of its political subdivisions, but rather they plan to market their product to facilities in other states.

The Department of Corrections, Division of Local Facilities (the "Division") conducts inspections of county jails to determine compliance with jail standards as required by Kentucky Administrative Regulations. When a county builds a new secure facility, architectural plans are submitted to the Division to determine compliance with applicable standards. Some firms with which the employees will contract to do business in other states might also do business in Kentucky (albeit without installation of the employees' proposed product).

The employees' involvement with secure facilities is limited to local facilities, i.e., jails, only. The employees' job duties include monitoring all jail construction and renovation, consisting of design, development, plan reviews and approval; conducting regular on-site inspections of construction and renovation; issuing enforcement orders to jail staff, fiscal courts, architects and other officials with regard to jail standards, security measures, fire and life safety, sanitation, and efficiency in economy of jail operations; and directing and monitoring the review and approval of plans for jail construction and renovation. The employees' current employment does not directly involve the installation, manufacturing or distribution of ventilation systems in state-owned secure facilities. Rather, their job duties involve more compliance monitoring in accordance with jail standards. Neither of the employees have procurement authority for the Department of Corrections, nor do they select architects, engineers, or any other professionals involved in the construction of local facilities.

You ask for an advisory opinion as to whether a conflict of interest will exist if the employees operate their proposed business and market their products to entities located outside the Commonwealth of Kentucky.

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;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

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;

Advisory Opinions 97-4 and 97-6 (copies of which are enclosed) both advise that a conflict of interest may exist if an employee reviews businesses as a part of his official duty which are in competition with his private business.

Similarly, the Commission sees a potential conflict if either of the employees is involved, as part of his official duty, in monitoring or reviewing the work of businesses or firms to which they may be marketing privately or which may be in competition with their private business. If either is the case, the Commission advises that, if the employees cannot abstain as part of their official duties from monitoring or review, they not market products to or compete privately with the businesses or firms which they monitor or review.

Enclosures AO 97-4
 AO 97-6