

**ADVISORY OPINION 98-2**

February 16, 1998

RE:            May employee provide full-time services for outside company as part of his official duty?

DECISION:    Yes.

This opinion is in response to your December 17, 1997, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 26, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The training coordinator of Logan Aluminum, Inc. ("Logan") has approached the Kentucky Advanced Technology Institute ("KATI") in Bowling Green and requested the services of a training specialist for one year on a full-time basis. The training specialist will continue to be paid by the Commonwealth at his current salary level, however KATI will receive reimbursement from Logan for the direct labor and expenses associated with the services the training specialist provides for Logan.

To the best of your knowledge, KATI has no contracts or agreements with Logan that involve state funds being awarded to Logan. KATI has no contracts through Bluegrass State Skills Corporation with Logan, nor is it writing any at this time. Further, KATI does not regulate the operations of Logan in any way.

You believe the arrangement does not present a conflict for the training specialist or KATI. You ask the Commission for its approval of such an assignment for the training specialist.

KRS 11A.040(5) and (9) provide:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission

(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.

Additionally, 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.

From the information provided the Commission, it does not appear that the assignment for the training specialist would be considered outside employment and need the approval of the Commission. Because the training specialist will continue to be paid his regular salary by the Commonwealth, it appears that his assignment at Logan will be part of his official duty.

Additionally, it does not appear that the training specialist will receive any compensation in addition to his state salary for the services he provides for Logan. Further, because Logan appears to have no business or regulatory relationship with KATI, the arrangement does not appear to present a conflict of interest.

Thus, it does not appear that the training specialist's assignment at Logan will violate the Executive Branch Code of Ethics. The Commission believes that the approval of such an assignment is a management decision that should be approved by the Management of your agency.