

ADVISORY OPINION 98-3

February 26, 1998

RE: May employee accept part-time position as mediator?

DECISION: Yes, as long as position does not conflict with official duty.

This opinion is in response to your January 15, 1998, 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. You are employed in the Office of the Ombudsman, Cabinet for Families and Children. Your primary job duties involve providing referrals for indigent clients to obtain services through the Kentucky Physician Care Program, a volunteer medical program. In addition, you assist citizens with problems or questions regarding the Department for Social Services.

On your own time and with your own financing, you obtained your Mediation Certification through the Mediation Center of KY, Inc. (the "Center"). You plan to act as the lead mediator of juvenile cases through the Center. These cases usually involve status offender juveniles and the party with which they are in conflict, and are referred by the parties, the court system or the Court Designated Worker (employed by the Administrative Office of the Courts).

You also are interested in mediating cases in the county where you reside. You ask if either of these situations would present a conflict with your official position for the Commonwealth.

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;

From the information that you have provided, it does not appear that your official duty involves any matters related to the part-time position that you seek. As long as you have no involvement, as a part of your official duty, in matters relating to your part-time employment or in matters concerning mediators with whom you would be in competition, the Commission does not believe a conflict of interest will exist between your official position and your part-time position.

However, if any type of business or regulatory relationship exists between the Cabinet for Families and Children and the Center, you must obtain approval from the Commission for your part-time position as required by KRS 11A.040(9) below:

(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.