

**ADVISORY OPINION 98-8**

February 26, 1998

RE: May employee sell pre-paid legal services on his own time?

DECISION: Yes, provided employee does not solicit individuals who do business with or are regulated by the Department of Education.

This opinion is in response to your January 5 and January 26, 1998, requests 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 the Manager of the Audit Branch, Division of Finance within the Department of Education. Your job responsibilities include overseeing the Department's review of local school district's financial audits, conducting attendance audits, reviewing site-based decision making allocations made by the local school boards to their schools, making health and life insurance premium payments on behalf of eligible local school district employees, reviewing and developing classified job descriptions for the local school districts and reviewing federal and state statutes and regulations in the areas of employee benefits to inform local school districts of any changes.

You ask whether it would present a conflict of interest for you to act as a sales representative, on your own time, for a pre-paid legal services company. Specifically, you ask whether you may sell pre-paid legal services to state and school board employees. Secondly you ask, if you are prohibited from selling such services directly, may you recruit individuals to work for you and sell such services.

KRS 11A.020(1)(a), (c) and (d) provide:

(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;

...

(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.

You are not prohibited from acting as a representative for a pre-paid legal services company on your own time. However, the Commission believes you should not attempt to sell such services to individuals or entities that do business with or are regulated by Department of Education. Any attempt to solicit sales from such persons may be viewed as a

conflict of interest between your private interest and your duties in the public interest.

The same opinion applies even if you do not directly sell to school board employees, but employ individuals that do. The fact that the agency for which you work is making decisions concerning an entity or individual that an employee of yours is soliciting presents a conflict of interest for you. Therefore, neither you nor individuals that work for you privately should solicit school board employees regulated by the Department of Education.

Further, if you solicit state employees, you should not use your influence or position to obtain sales from a fellow employee.