

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-32

August 31, 1999

RE: May state trooper hold part-time employment as an assistant commonwealth attorney or as an assistant county attorney?

DECISION: Yes.

This opinion is in response to your July 1, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as a state trooper. You will soon graduate from law school and would like to serve as an assistant commonwealth attorney or an assistant county attorney in addition to your employment as a state trooper. You ask whether there is a statutory prohibition or other conflict if you serve in both capacities.

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.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-32

August 31, 1999

Page Two

Additionally, KRS 11A.020(2) provides:

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

In Advisory Opinions 93-7 and 97-10 (copies of which are enclosed), the Commission concluded that, although assistant commonwealth attorneys are considered "state employees", both they and county attorneys are not accountable to the executive branch of government and thus are not subject to the Executive Branch Code of Ethics. However, as an employee of the Department of State Police, you are subject to the Executive Branch Code of Ethics.

From the information provided to the Commission, it does not appear that a conflict of interest under the ethics code will exist if you are employed as an assistant commonwealth attorney or as an assistant county attorney in addition to your full time employment as a state trooper. However, you should take great care not to use your influence as a state trooper to give yourself an advantage privately or in any matters that pose a conflict with your position as an assistant commonwealth attorney or an assistant county attorney. Specifically, as you have stated, you should not prosecute any case in which you will give testimony.

Because it appears an assistant commonwealth attorney is considered a state position, you also may need to seek approval for your dual employment under 101 KAR 2:095, Section 3 which provides:

Section 3. Dual Employment. No employee holding a full-

time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

Additionally, the Department of State Police is not prohibited from implementing in-house policies, in addition to the Executive Branch Code of Ethics, regarding conflicts with certain outside employment.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-32

August 31, 1999

Page Three

The Commission also recommends that you contact the Kentucky Bar Association concerning this matter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR

Enclosures: Advisory Opinion 93-7
Advisory Opinion 97-10