

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-42**

October 22, 1999

RE: May employee continue outside employment as director of nurse's aide training program?

DECISION: Yes, within limitations.

This opinion is in response to your October 3, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 22, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You began employment with the Department for Medicaid Services, Division of Long Term Care (the "Division"), as a nurse consultant/inspector in May of 1999. In addition, you hold outside employment as the director of the nursing aide program for Louisville Education and Development (LEAD), a division of Critical Care Connections.

You work for the Policies and Operations Branch within the Division. Your job responsibilities include developing mental retardation policy and procedures, working on waivers, and auditing providers. One of the responsibilities of the Branch is to monitor nursing assistant programs and facilities; however, you are not involved in monitoring the operations of nursing assistant programs or in writing policies or regulations involving the nursing assistant program. Additionally, the Policies and Operations Branch reimburses nurse's aides for their training costs after they successfully complete a nurse's aide program. The Branch also creates regulations for such programs and audits them to make sure they meet standards. Again, you do not perform any of these functions. You have advised that if you were asked to perform such functions, you would decline or terminate your outside employment.

Your responsibilities for LEAD include overseeing the training of the students by the instructors, developing the course outline and ensuring the curriculum. You do not train students yourself, but monitor student performance and academic standing. You ask the Commission for an opinion as to whether your outside employment presents a conflict, and whether you should resign your position with LEAD.

KRS 11A.040(10)(a) and (b) provide:

10) Without the approval of his appointing authority, 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.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

Additionally, KRS 11A.020(1)(a) 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;

...

(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.

The Commission takes note that your official duties for the Division do not include working on nursing systems regulations or auditing in the area of nursing systems. Thus, the Commission believes that you may continue your outside employment with LEAD, provided you are not involved in monitoring or auditing businesses which may be in competition with LEAD or Critical Care Connections, and provided your co-workers are not involved in the audit or monitoring of the nurse's aide program conducted by LEAD. Furthermore, as an employee or representative of LEAD, you should not interact with the Division concerning the nurse's aide

program.

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Please find attached several advisory opinions that may help provide you with additional guidance in this area.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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By Chair: Bertie Oldham Salyer, M.A., A.M.E.

Enclosures: AO 96-2  
AO 96-55  
AO 97-15

October 25, 1999

Benita Jackie, R.N.  
Division of Long Term Care  
Department of Medicaid  
Cabinet for Health Services  
275 East Main Street  
Frankfort, Kentucky 40601

*Reference: 102299.6*

Dear Ms. Jackie:

At its October 22, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated October 3, 1999, in which you ask whether an employee may continue outside employment as director of nurse's aide training program.

The enclosed Advisory Opinion 99 – 42 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: AO 99-42

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