

Executive Branch Ethics Commission
ADVISORY OPINION 12-03
March 19, 2012

- RE:**
1. May the State Apiarist teach a class on beekeeping for compensation?
 2. May the State Apiarist teach a class on beekeeping for compensation as an employee of his wife's bee keeping supply store?

- DECISION:**
1. Yes, so long as teaching such a class is not part of the State Apiarist's official duties and he avoids any conflict of interest.
 2. No, if the State Apiarist is involved in decision-making or recommendations concerning the business in his official capacity.

This opinion is issued in response to the Kentucky Department of Agriculture's ("KDA") February 29, 2012, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The request was reviewed at the March 19, 2012, meeting of the Commission and the following opinion is issued.

Your request involves the State Apiarist (a.k.a., the "State Beekeeper"), which is a position within the Office of the State Veterinarian. The Office of the State Veterinarian monitors and regulates animal health. The State Beekeeper is a non-merit position appointed by the KDA Commissioner. The position is created by statute and is vested with police powers to assist in the control of bee diseases. *See KRS 252.180-240.* The position is not a stationary one, but rather requires a great deal of travel to inspect hives and respond to Kentucky beekeepers needing advice and counsel on matters ranging from re-queening a hive to moving bees to another location.

According to your letter, the KDA Commissioner has identified a candidate for the State Beekeeper position who is highly qualified and possesses the requisite education and unique and rare experience level to advise Kentucky beekeepers on disease and other beekeeping matters. This candidate, in full candor, informed KDA staff that his wife owns and operates a bee keeping supply store in Clarkson, Kentucky. While the candidate neither owns this company nor has any controlling interest in it, he does teach a beekeeping class at this company and is compensated for it. Should this individual be appointed as the State Beekeeper, he would like to continue teaching this class. He would not teach classes on state time and has assured you that his outside teaching job would not interfere with his duties and responsibilities as State Apiarist. On the

Executive Branch Ethics Commission
ADVISORY OPINION 12-03
March 19, 2012

contrary, he apparently feels this teaching position would enhance his experience and education in this field.

Your question is whether there exists some conflict of interest or other ethical problem for this individual to hold the State Beekeeper position while teaching a beekeeping class at his wife's bee supply company.

You have indicated to Commission staff that while part of the State Beekeeper's job duties are to educate those who want to be beekeepers, and that the State Beekeeper traditionally speaks at meetings and conferences on the subject of beekeeping, his normal job duties would not include teaching a class such as the one described. If this were not the case, then the State Beekeeper candidate would not be able to teach the class for compensation, as KRS 11A.040(5) prohibits a public servant from accepting "compensation, other than that provided by law for public servants, for performance of his official duties." See Advisory Opinions 02-17 and 01-42, attached. Since it is your opinion that the class the candidate intends to teach would not be part of his official duties, the first issue to be addressed is whether the potential State Beekeeper's proposed beekeeping class would be acceptable under the outside employment provisions of the Executive Branch Code of Ethics ("Code of Ethics"). KRS 11A.040(10) states as follows:

- (10) Without the approval of his appointing authority, a public servant shall not 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.
 - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

Therefore, if the State Beekeeper candidate intends to teach the class as an employee of his wife's bee keeping supply store, it must first be determined whether the business does business with or is regulated by KDA. If either is the case, then the candidate must receive KDA's approval to teach the class. The approval may not be granted if as State Beekeeper the candidate would be involved in decision-making or recommendations concerning the business.

Executive Branch Ethics Commission
ADVISORY OPINION 12-03
March 19, 2012

Since the business's webpage indicates that it sells and ships bees and queens, and KRS 252.180 gives the state apiarist the power to enforce the provisions of KRS 252.180 to 252.240, which includes the regulation of bee diseases and the power to establish quarantines relating to the shipment of bees and queen bees, it appears that the State Beekeeper candidate could indeed be involved in decision-making or recommendations concerning the business in question. If such proved to be the case, then KRS 11A.040(10) would prevent the employment of the candidate by his wife's business.

However, if instead of actual employment by his wife's business, the candidate merely teaches classes as an independent contractor, the provisions of KRS 11A.040(10) would not apply and the candidate could teach the classes so long as teaching the classes did not create any conflicts of interest. Clearly the candidate could not use his official position or title to market or promote his class. Nor could the class be taught on state time or using state resources. Furthermore, the candidate would have to take care not to be directly involved as part of his official duty in any matters affecting the persons taking his class. For example, a conflict could arise if a current student was affected by an order issued or being enforced by the state apiarist in his official capacity. In such a situation, it would be contrary to the Code of Ethics for the state apiarist to accept compensation from the individual.

The Commission would also like to take this opportunity to advise the KDA that should it hire this candidate as the State Beekeeper, he would need to abstain from any matters involving his wife's business pursuant to KRS 11A.020(3), which states as follows:

When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The candidate would also have to take care not to use his official position or title in any way that would give an advantage to his wife's business.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Ronald L. Green

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.