

EXECUTIVE BRANCH ETHIC COMMISSION  
**ADVISORY OPINION 00-20**  
**Replacing AO 95-15**  
June 23, 2000

RE: May an executive branch employee own stock or other interest in an entity that is regulated by, or does business with, his employing state agency?

DECISION: Yes, within limitations.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission"), on its own initiative, because questions have been raised by executive branch employees concerning whether an employee may own stock in an entity that is either regulated by or doing business with the state agency for which the employee works. The Commission believes this question affects many employees. This matter was reviewed at the April 27, 1995, meeting of the Commission, and Advisory Opinion 95-15 was issued. This matter was reviewed again at its April 28, and June 23, 2000 meetings and the following opinion is a reconsideration of Advisory Opinion 95-15.

KRS 11A.005 provides:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
  - (a) A public servant be independent and impartial;
  - (b) Government policy and decisions be made through the established processes of government;
  - (c) A public servant not use public office to obtain private benefits; and
  - (d) The public has confidence in the integrity of its government and public servants.
- (2) The principles of ethical behavior for public servants shall recognize that

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(a) Those who hold positions of public trust, and members of their families, also have certain business and financial interests;

(b) Those in government service are often involved in policy decisions that pose a potential conflict with some personal financial interest; and

(c) Standards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.

KRS 11A.020(1) states:

(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.

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement,

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lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

The Commission believes that a person owns a percentage of a corporation when he owns stock. He then has a personal, direct financial interest in the success of the company. Such interest could impair his ability to make agency decisions concerning such a company in a fair and impartial manner. Even if the employee is not an elected official or officer as defined in KRS 11A.010(7), occasionally he may be in a position to influence decisions concerning the company in which he has an ownership interest.

Thus, based on the provisions in KRS 11A.040(4) above, the Commission believes that an employee is prohibited from owning more than five percent (5%) of a corporation (or any other entity) that does business with the state agency for which the employee works. Additionally, the Commission believes that a conflict of interest may exist for an employee to own an interest with a value of at least five percent (5%) of an entity that is regulated by his employing state agency, unless neither the employee, nor anyone under his supervision, is directly involved in any matters concerning the company or other entity of which he owns an interest.

Likewise, the Commission believes a public servant's spouse and dependent children should not own stock or other interest in a company whose stock the employee is prohibited from owning. Other family members may own stock in such a company provided the family member

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is not holding the stock for the benefit of the employee, spouse or dependent children. However, as provided below in KRS 11A.040(3), an employee may not act as representative of the Commonwealth in the transaction of business with a company of which he or his family owns greater than a five percent (5%) interest.

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

The Commission believes an employee or spouse may own stock or other interest with a value of over five percent (5%) in a company or other entity that is regulated by the agency for which the employee works, if the stock or other interest is purchased exclusively through participation in a publicly traded mutual fund where the purchasing and selling decisions are completely out of the control of the employee or spouse. The Commission believes that such an investment is not considered ownership in a particular company, but an investment in the mutual fund.

KRS 11A.050(3)(e) requires:

(3) The statement shall include the following information for the preceding calendar year:

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(e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more.

Although certain executive branch employees are required to disclose any interest with a fair market value of \$10,000, the Commission believes that such disclosure does not necessarily prohibit an employee with such an interest from doing business with or from being regulated by the state agency for which the employee works unless the value is also at least 5% of the entity. Thus, the Commission amends its original opinion in Advisory Opinion 95-15.

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This opinion is not intended to prohibit an agency from adopting internal policies concerning this issue which may be more restrictive than this opinion. If an agency believes that ownership of stock or other interest with a value of less than 5% may cause a conflict of interest for its employees or the appearance of a conflict, the Commission encourages the agency to develop internal policies which may be more restrictive to help alleviate such conflicts.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.