

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 00-32**  
June 23, 2000

RE: May employees of Department of Housing, Buildings and Construction assist in development of code books which may be adopted by the Department?

DECISION: Yes, provided the employees have no involvement in the adoption of the codes as part of their official duties.

This opinion is in response to your May 25, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 23, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Board of Housing, Buildings and Construction is authorized to adopt building and fire codes for use as reference by the Department of Housing, Buildings and Construction (the "Department"). Thus, the Department selects from among various sources the building and fire code books it wishes to adopt for use as reference for its building and fire codes. These books are developed by professional organizations to which many employees of the Department belong. Some employees pay for their memberships in these professional organizations that develop such code books, while other employees have their memberships paid by the Department. Employees serve on subcommittees and attend meetings to develop the code books at the Department's expense. The Department believes that the employees' involvement in the code development process is in the public interest and is a benefit to the Department.

The Director responsible for recommending which codes to adopt also serves as the Chairman of the technical committee for the National Fire Protection Association (NFPA). The NFPA is one of the organizations that has developed a building code it would like the Department to adopt. Additionally, the organization that publishes the Building Officials and Code Administrators (BOCA) book, which is currently used by the Department, is seeking for the Department to adopt its 2000 edition. You ask if there are ethical issues with regard to these facts.

Employees of the Department may be involved in the development of code books through professional organizations, provided such employees have no involvement in the

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adoption of the codes for the Department. However, if the Director responsible for recommending to the Department which codes to adopt serves as a chairman of a committee that develops a code for possible adoption by the Department, it may create or give the appearance of a conflict of interest. Thus, the Commission believes that the Director should either discontinue his involvement in the code development process of the NFPA or he should abstain in his official position from any involvement in recommending of adoption of codes.

KRS 11A.020(3) provides:

(3) 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.

Thus, if the Director abstains from involvement, recommendations regarding which codes to adopt should be made by someone not under the supervision of the Director.

Additionally, the Commission believes that the Department's payment of membership fees and expenses associated with the employees' involvement in these organizations is a management decision.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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