

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-60
November 3, 2000

RE: May Board members receive stipends from Board on which they serve?

DECISION: No.

This opinion is in response to your September 26, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"), regarding the actions of certain board members although they are not subject to the Executive Branch Code of Ethics. This matter was reviewed at the November 3, 2000, meeting of the Commission and notwithstanding the following opinion is issued.

You state the relevant facts as follows. House Bill 25, passed by the 2000 General Assembly, created the Teachers' National Certification Incentive Trust Fund ("Fund") to be administered by the Education Professional Standards Board (the "Board"). National Board Certified Teachers ("NBCT"), of whom there are only 37 in Kentucky, may receive stipends from this Fund for serving as mentors to National Board candidates or other teachers in their districts. The Board reviews proposals from local school districts for approval of stipends for NBCT mentoring programs. The Board has promulgated regulations establishing the requirements for teachers and local boards of education to access monies from the Fund.

At its September 11, 2000, meeting, the Board reviewed five mentoring program proposals from local school districts. All five proposals identified mentoring as an extracurricular activity to be performed in addition to each mentor's teaching contract responsibilities. Two Board members who are NBCTs are included as mentors in two of the proposals, and thus they will receive stipends for their service. You point out that both of these teachers were NBCT mentors prior to the passage of House Bill 25 and the establishment of incentive payments for this service. Both teachers recused themselves from the discussion involving the five proposals and the vote by the Board approving the five mentoring programs, subject to a finding of any conflict of interest by the Commission. You ask for the Commission's opinion on this matter.

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KRS 11A.020(1)(a) and (c) 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;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

Although the members of the Board are not subject to the Executive Branch Code of Ethics, the Commission advises the Board to implement an in-house policy regarding Board members who are also NCBTs and wish to apply through their school districts for stipends from the Fund. The Commission believes that if such Board members receive from the Board stipends for service, the public may perceive this action as a substantial conflict of interest between the Board members' private interests and their duties in the public interest. Even though they have recused themselves from this particular discussion and decision, the Commission believes that if the Board members are responsible for reviewing other applicants for stipends or reimbursements, they may have difficulty being objective in their review of the allocation of funds. See Advisory Opinion 96-31 (a copy of which is enclosed).

Additionally, 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, 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

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(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 above provisions prohibit an employee of the Board from having a contract or an agreement with the state agency for which he works. Likewise, the Commission believes that the Board members, although they may serve as mentors, should not accept any financial benefit from the Board on which they serve. Such financial benefit would constitute an agreement between the agency and the Board members.

Again, because the Board members are not subject to the KRS Chapter 11A, this advice is not binding on the Board members. However, the Commission believes that Board members would be well-guided to follow this advice, and it would like to see this opinion used as guidance by the Board in future activities.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosure: Advisory Opinion 96-31