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BOYCE A. CROCKER

ADVISORY OPINION 01-24

June 22, 2001

RE: Does the assignment of an Unemployment Insurance Commission Appeals Referee to conduct hearings for the Appeals Branch of the Division of Unemployment Insurance create a conflict under KRS Chapter 11A?

DECISION: No, provided the Unemployment Insurance Commission Appeals referee does not review hearings he conducts.

This opinion is in response to your June 11, 2001 request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 22, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as an Appeals Referee by the Unemployment Insurance Commission (the "UIC"), an agency within the Workforce Development Cabinet (the "Cabinet"). Recently you have been directed to conduct hearings for the Appeals Branch of the Division of Unemployment (the "Division"), which is also an agency within the Workforce Development Cabinet. As an UIC Appeals Referee, one of your job duties is to review appeals of decisions made by the appeals referees with the Division. You state that should you hear a case in your temporary position as an Appeals Referee for the Division, you would not be in a position to hear or influence any appeal of such a decision made to the UIC. You ask whether this arrangement may present any conflicts of interest under KRS 11A, the Executive Branch Code of Ethics (the "Code").

11A.020 Public servant prohibited from certain conduct --
Exception -- Disclosure of personal or private interest.

(1) No public servant, by himself or through others,
shall knowingly:

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- (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.020(1), cited above, does prohibit public servants from engaging in certain conduct that may present conflicts of interest between the public servant's official position and his private interest. KRS 11A.030 sets forth guidelines to assist a public servant in determining whether or not a conflict of interest exists between the public servant's official position and his private interest. Finally, KRS 11A.040 lists actions that are prohibited for a public servant in order to avoid conflicts of interest.

However, nothing in the Code appears to prohibit you from temporarily conducting hearings for the Division. Thus, it appears to the Commission that you may conduct hearings for the UIC provided you do not review any appeal of decisions you make for the Division. The fact that your co-workers may be hearing appeals of decisions you may make does not appear to present a conflict of interest or give you an advantage because you have no authority over your co-workers.

The Commission further instructs you not to discuss with your co-workers matters concerning any hearing you conduct.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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