

## **ADVISORY OPINION 01-29**

August 10, 2001

RE: May Commissioner continue to serve as President of non-profit corporation?

DECISION: No, if perception of a conflict exists.

This opinion is in response to your July 12, 2001, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 10, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You currently serve as the Commissioner of the Department of Workers' Claims (the "Department"). Prior to beginning this service on May 7, 2001, you were engaged in the private practice of law in Louisville, and your spouse was your legal secretary.

Several years ago, you began CompEd, Inc., ("CompEd"), a private, non-profit Kentucky corporation which purpose is to educate workers compensation practitioners and to fund scholarships for law schools. CompEd's Board of Directors is composed of approximately forty (40) workers compensation practitioners. You serve as the President and Director of CompEd; however, you have never received a salary for your services, only reimbursement for actual expenses. Your spouse performs clerical duties for CompEd.

CompEd conducts an annual workers compensation seminar for continuing legal education purposes, publishes an annotated version of the workers compensation statutes/regulations, and maintains a web site. CompEd has no employees, and its business has been conducted at your former private law office. CompEd, in its annual seminar agenda does not promote legislative changes nor discussions of such. Any profits generated by CompEd go to Kentucky law schools for scholarships.

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For the last several years you have also served as a Director/Trustee of the Kentucky YMCA Youth Association, Inc. (the "KYA"). KYA is a non-profit corporation that fosters and encourages community service for young people. As a Director/Trustee you participate in overseeing its investment portfolio.

You ask for an opinion that will answer the following questions:

- 1) May the Commissioner of the Department of Workers' Claims continue serving as President of CompEd, Inc.?
- 2) May the Commissioner of the Department of Workers' Claims continue serving as Director/Trustee of KYA?
- 3) If the Commissioner of the Department of Workers Claims is prohibited from serving as President of CompEd, Inc., may his wife serve in that capacity?
- 4) Is the wife of the Commissioner of the Department of Workers' Claims prohibited from working as a legal secretary for the Commissioner's previous law partners or other attorneys who represent clients in workers' compensation cases?

The Department regulates the filing and processing of workers compensation claims under Kentucky law. Contested claims, however, are processed through independent Administrative Law Judges ("ALJs") and the Workers Compensation Board, over which the Commissioner exercises case management control, but does not assign cases to ALJs. In Advisory Opinions 95-43 and 94-17 (copies of which are enclosed), the Commission addresses the issue of whether a state employee may serve as a director/coordinator of a non-profit organization. In those opinions the Commission stated that it did not see an apparent conflict of interest for an employee to serve as a director or coordinator of a non-profit entity provided the non-profit entity has no business or regulatory relationship with the state agency for which the employee works and provided the employee's responsibilities for the non-profit entity do not involve dealings with persons or businesses that are regulated by or that do business with the employee's agency.

It does not appear that there is a business or regulatory relationship between CompEd and the Department or that CompEd is trying to influence actions of the Department. However, from the information provided to the Commission it is not apparent whether you have any involvement as part of your responsibilities for CompEd with persons or businesses that are regulated by, doing business with, or are attempting to influence actions of the Department.

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Such involvement may pose a conflict of interest for you. It appears that one possible conflict is that Department attorneys, ALJs or other private practitioners who have cases before the Department might attend a CompEd seminar or purchase/use CompEd materials for a fee. As Commissioner of the Department and as President of CompEd, this dual role may create a perception that official decisions made by the Department regarding such individuals may not be objective. Additionally, Department attorneys and ALJs may perceive that they should attend CompEd classes instead of seminars put on by another provider of such services.

Though these potential conflicts may appear to be small, and possibly remote, the Commissioner should be, and appear to be, impartial in all actions taken as Commissioner. Being President of CompEd and Commissioner of the Department may well lead to a perception of impropriety, but such a perception should be avoided nonetheless. Thus, the Commission advises that you not serve as President of CompEd if any of the potential conflicts create such a perception.

Though you may be prohibited from serving as President of CompEd for the reasons outlined above, there appears to be no prohibition on your spouse from serving in that role for CompEd. Advisory Opinion 00-64 is on point. You should recuse yourself from any action, pursuant to KRS 11A.020(3), that would lead members of the general public to conclude that you are using your official position to work a benefit for your spouse or for CompEd.

The Commission does not see any business or regulatory relationship between the Department and KYA, save that KYA could, as might any other employer, some day appear before the Department in regards to a claim. Should that occur, you should abstain from any involvement in such claim, and make disclosure of that fact pursuant to KRS 11A.020(3):

(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.

Otherwise, you may continue to serve as a Director/Trustee for KYA.

Finally, you ask if your spouse may work as legal secretary for your former law partners or others in workers' compensation cases. As your spouse is not directly regulated by the

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Department, there is no prohibition on her employment as a legal secretary for your former law partners or in the area of workers' compensation. Again, you should recuse yourself, pursuant to KRS 11A.020(3), should any action you might take as Commissioner lead the general public to conclude you are using your official position to benefit your spouse.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Cynthia Stone, J.D.

Enclosures: Advisory Opinion 95-43  
Advisory Opinion 94-17