

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 01-32

September 28, 2001

RE: Does spouse's affiliation with real estate firm owned, in part, by Real Estate Commission member present conflict for Director?

DECISION: No, if Director abstains from involvement in appointment of Real Estate Commission member.

This opinion is in response to your August 13, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 28, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The spouse of the Director of Boards and Commissions (the "Director") in the Office of the Governor has been offered an opportunity for employment with a real estate firm. A member of the Real Estate Commission who was previously appointed by the Governor is a part owner of the real estate firm. The spouse will be a member of the firm and will not be supervised by the owner, but will serve as an independent real estate agent whose commissions from sales will be shared with other firm members pursuant to a predetermined policy.

The Director has not used his official position to influence or obtain any gain for himself or his spouse in connection with this matter. The employment with the firm was obtained through the spouse's initiative. You ask for an advisory opinion as to whether the spouse's employment with the firm will present a conflict of interest for the Director.

KRS 11A.020(1)(a), (c) and (d) 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

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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; 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.

The Commission takes note that, pursuant to KRS 324.281, the Kentucky Real Estate Commission members are appointed by the Governor from a list of nominees submitted by the Kentucky Association of Realtors.

The Commission believes that a potential conflict of interest exists for the Director if the Director's spouse accepts employment with a real estate firm owned, in part, by a member of the Real Estate Commission in that the member may be nominated for reappointment. However, the Commission also believes that the conflict may be avoided if the Director abstains from any involvement in the appointment of a member of the Real Estate Commission if the Kentucky Association of Realtors should nominate an owner of the firm in which the Director's spouse is employed for appointment. Such abstention should be documented in writing pursuant to KRS 11A.020(3) below, which states:

(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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia Stone, Esq.