

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-39
November 9, 2001

RE: Does Division of Water employee's ownership of car wash present a conflict?

DECISION: No, unless the car wash is regulated by a utility under the regulation of the Division of Water.

This opinion is in response to your October 1 and October 4, 2001, requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 9, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as an Environmental Inspector at the Morehead Regional Office for the state Division of Water. You have recently applied for a promotion to the position of supervisor in the Morehead Regional Office. Additionally, you and your wife are building a full service car wash in Morehead that you and your wife will own and operate. The car wash will use water provided by the Morehead water treatment plant and wastewater will go to the Morehead wastewater treatment plant. You state that in some cities car washes may be regulated by the local water utility; however you do not believe that the Morehead Utility Plant Board (the "MUPB") regulates car wash waste. You ask if this scenario presents a problem for you relative to your job duties with the Division of Water.

KRS 11A.020(1)(a) provides:

- (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;

The Commission believes that although the car wash will use services provided by the MUPB, an entity which in your official position you have occasion to regulate, this will not result in a conflict for you, unless the MUPB regulates or in some way has contact with you

regarding issues involving the car wash's lack of compliance. You have no choice as to the water you will use for your business as it is located within the MUPB service area.

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There does, however, exist the potential that it will appear the MUPB may receive favored treatment from your office if the MUPB is involved in a compliance or regulatory matter with your car wash. Because of this potential for conflict, if the car wash is regulated by or is involved in compliance matters with the MUPB, then neither you nor anyone under your supervision should be involved in the regulation of the MUPB. You should abide by the provisions of KRS 11A.020(3), 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, Esquire