

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-10
March 22, 2002

RE: Does employee's involvement with a private grant application create a conflict with his official duties?

DECISION: Yes.

This opinion is in response to your January 23, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. As part of the 1997 Postsecondary Education Reform, the Council on Postsecondary Education administers the Regional University Excellence Trust Fund (the "Trust Fund") which funds regional university "programs of distinction." (KRS 164.7919). Regional universities identify areas of instruction and submit proposals to the Council for review and approval as "programs of distinction." In addition to the funding by the Trust Fund, the "programs of distinction" are matched 50-50 by private funds.

Kentucky State University's "aquaculture research program", which includes in its mission agricultural experimentation with a view to agricultural business development, was approved by the Council as a "program of distinction" on September 27, 1999. The "aquaculture research program" was approved prior to the employment of the Council staff member who currently coordinates the "programs of distinction." The staff member is a farmer who raises cattle, tobacco, and freshwater shrimp, privately. He also serves as a board member of the Kentucky Aquaculture Association (the "Association"), a producers trade organization, and as a board member of the Kentucky Shrimp Growers' Cooperative Association (the "Cooperative"). The Cooperative serves as a purchasing agent and marketer for its members engaged in freshwater shrimp production.

The Cooperative proposes to establish and operate a shrimp hatchery and nursery in eastern Kentucky. In conjunction with the prospective shrimp hatchery and nursery project, the Cooperative applied for grants in September 2001 from the Agricultural Development Board (the "Board"). The Board provides grants to farmers, cooperatives, industries, and universities for agricultural opportunities as alternatives to raising tobacco.

Kentucky State University also recently applied to the Board for a tobacco settlement grant to engage in aquaculture research. University officials have questioned the propriety of the Council staff member's involvement in the Kentucky Shrimp Growers' Cooperative's grant application to the Board. You state that the Kentucky State University grant application to the Board will not be seen or reviewed by the Council or its staff. Additionally, the staff member's coordination of the existing "programs of distinction" is limited to a biennial review of the university's report of progress. This review does not affect additional funding but could result in recommendations for changes to the program.

Kentucky State University is not a member of the Association, but it does pay the membership fee for a faculty member to be on the board of the Association.

You ask two questions:

- *Does the staff member's participation on the Kentucky Aquaculture Association board constitute a conflict of interest with Council duties?*
- *Does the staff member's participation in the Kentucky Shrimp Growers' Cooperative's grant application for funding through the Agricultural Development Board constitute a conflict of interest with the staff member's coordination of Council "programs of distinction" where the Council is not involved in decisions of the Agricultural Development Board?*

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 the staff member's participation on the board of the Association does not create a conflict of interest with his Council duties relative to the above scenario, even though a faculty member from KSU also serves on the board of the Association.

As to your second question, the fact that the staff member is involved in the Cooperative's grant application to the Board does create a conflict interest for the staff member. The Commission questions the independence of the staff member's review of the aquaculture research program, a program with which he is competing privately for a grant. Although the staff member only reviews the program biennially, and the review does not affect additional funding, the fact that the review may result in recommendations for changes to the program creates the conflict for the staff member.

The Commission recommends that in order to "cure" this conflict of interest the staff member should abstain from any involvement in the review of any Kentucky State University "programs of distinction," specifically the "aquaculture research program". The Commission believes that such abstention will alleviate an actual conflict for the staff member, but cautions that even if he abstains, an appearance of a conflict may still exist for the staff member. If the staff member wishes to avoid even the appearance of a conflict, the Commission recommends that he also remove himself from any involvement in the Cooperative's grant application to the Board.