

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-18

March 22, 2002

RE: Does Assistant Director's service on professional organization's board create a conflict?

DECISION: Yes.

This opinion is in response to your February 6, 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. The Kentucky Board of Licensure for Professional Engineers and Land Surveyors (the "Board") is responsible for investigating complaints regarding professional land surveyors. KRS 322.250 provides that each land surveyor appointment to the Board shall be made from a list of not less than three (3) nominees to be submitted to the Governor jointly by the Kentucky Society of Professional Engineers and the Kentucky Association of Professional Land Surveyors ("KAPS"), with input from other professional societies. You state that currently a member of the Board, and the Assistant Director of the Board, both serve on the Board of Directors for KAPS. You ask whether such dual service presents a conflict of interest for the Board member or the Assistant Director.

Additionally, you ask about the propriety of several KAPS board members providing investigative services for the Board through contractual agreements.

KRS 11A.005(1)(a) provides:

- (1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:
 - (a) A public servant be independent and impartial;

EXECUTIVE BRANCH ETHICS COMMISSION

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Page Two

The Commission believes that the Assistant Director's service on the board of KAPS may create a public perception that the interests of KAPS may outweigh the duty of the Assistant Director to regulate and investigate land surveyors fairly. The Commission views this situation as open to potential conflicts of interest. In the interest of an appearance of strict neutrality in regulation activities, the Commission believes the Assistant Director should not serve on the board of KAPS, but may be a member of KAPS, the organization promoting the interests of land surveyors. Furthermore, a conflict of interest will exist for the Assistant Director if, as a board member of KAPS, he is involved in the nomination of a land surveyor appointment to the Board.

As provided in Advisory Opinion 93-53, members of most boards and commissions are not considered public servants subject to the Executive Branch Code of Ethics. Thus, the member of the Board who also serves on the board of KAPS is not under the jurisdiction of the Commission. However, the Commission believes the fact that the Board member also serves on the board of KAPS, which is involved in nominating members to the Board, could damage public confidence in the integrity of the Board.

Regarding your second question, the Board is not prohibited from contracting with board members of KAPS to provide investigative services; however, the Commission believes, as stated above, that the public perception may exist that the interests of KAPS could outweigh the duty of the individuals contracted to investigate land surveyors fairly may exist. Thus, the Board should take precautions to avoid such a perception when considering contracting with members of the KAPS board.

Included for your further review are Advisory Opinions 93-38 and 99-40.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 93-38
Advisory Opinion 99-40