

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-40
November 22, 2002

RE: May an employee rent a house from employees over whom he has ultimate, but no direct, authority?

DECISION: Yes.

This opinion is in response to your July 11, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission") in which you seek the Commission's advice regarding a potential conflict of interest.

You state the following facts. You are currently the Plumbing Inspections Field Operation Manager for the Division of Plumbing, Department of Housing, Buildings and Construction (the "Department"). In your position you are responsible for interpreting the plumbing code and resolving disputes between plumbers and homeowners. You also assist plumbing inspectors with problems that arise on field inspections or other issues. You ask whether you may rent a house owned by several plumbing inspectors under your ultimate authority. Although the plumbing inspectors are indirectly under your supervision, you state that you do not evaluate these, or any, plumbing inspectors as part of your job duties.

KRS 11A.020(1) 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (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 previously held in Advisory Opinion 98-45, a copy of which is enclosed, that a contractor could rent a room from an agency employee, so long as fair market value was received. In this situation you propose to lease a house from plumbing inspectors over

whom you have indirect, but no direct, authority. As in Advisory Opinion 98-45, so long as a fair market value is paid by you, there is no conflict of interest for you to lease a house from these plumbing inspectors.

Additionally, you would need to abide by the lease agreement and not use your position of authority over the inspectors to give yourself an advantage in any way.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosure: Advisory Opinion 98-45

DIVISION OF PLUMBING

