

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-45**

September 11, 2002

RE:            May the state budget director also serve as interim president of the University of Louisville?

DECISION:    Yes, provided his service does not conflict with his state employment duties.

This opinion is made on the motion of the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 11, 2002, meeting of the Commission and the following opinion is issued.

The State Budget Director (the "Director") recently was named to be Interim President (the "President") at the University of Louisville (the "University") while the University completes its search for a permanent President. The Director will continue in his position with state government while serving as Interim President of the University. He will assume the Presidency on September 2, 2002; it is anticipated that the University will name a permanent President by the end of 2002.

KRS 11A.120 provides:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties. Nothing in this section shall prohibit or restrict a present or former public servant from accepting employment with a state institution of higher education immediately following termination of his office or employment in another state agency.

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Thus, so long as the Director has no conflict of interest between his state employment duties and his duties for the University, he may serve as interim President. To that end, KRS 11A.005(1)(a)-(d) and KRS 11A.020(1)(a)-(d) and (2) provide:

KRS 11A.005(1)(a)-(d):

(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;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(a)-(d) and (2):

(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.

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(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

In his state employment, the Director oversees the state agency charged with primary responsibility for drafting the state's budget, exclusive of the legislative and judicial branches. The University, which is a public school and is funded through the state budget process, is in fact one of several state-funded institutions of higher learning the budget of which is accounted for in a document prepared by the Director's office that ultimately takes shape as the Governor's budget, submitted to the Legislature. The Director clearly has significant impact on the final form of this document, including budget requests from individual agencies, and universities. The Director, or his staff, also frequently is called to testify before various legislative committees regarding the budget document, as are representatives of the various agencies and entities whose budgets are summarized in the budget document, including representatives of the state-funded public universities.

The conflict of interest for the Director inherent in this situation is his involvement in the state budget process on matters that will impact the University or other public universities. For example, while in the role of Director, he has occasion to craft the state budget document that includes the budget wishes of the University. In order to abide by the clear intent of the Executive Branch Code of Ethics (the "Code"), the Director, in his role with his state agency, must abstain from involvement with budgetary matters involving the University, due to the inherent conflict of interest at stake. The Director should give strong consideration to abstaining from any involvement with budgetary issues for the other state-funded universities as well.

Additionally, while serving as President, even on an interim basis, it is reasonable to assume that the Director will be involved in all major policy decisions, especially those budgetary issues. In Advisory Opinion 93-9 (a copy of which is enclosed), the Commission held that a state agency employee who was in a "dual employment" arrangement with a university via a memorandum of agreement could not represent the university before the state agency by which he was employed. In that case the Commission reasoned that since the state agency would be making a final decision on an issue of interest to the university, the employee, should he represent the university before his state agency, might be in violation of KRS 11A.020(2), above.

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In this instance, the Director, in order to avoid this appearance, must not appear before his state agency on behalf of the University, nor appear or testify before any public agency on behalf of the University if such appearance would give rise to doubts about the interest represented. For example, the Director should not testify to the Legislature on matters related to the budget of the University that arose from his tenure as President.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 93-9