

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-13

(original issue March 25, 2003)

RECONSIDERED AND AMENDED

June 18, 2003

RE: May regulatory boards hire inspectors who are employed in the profession they regulate, provided the Executive Director (or Administrator) of the board inspects the businesses owned by or employing the inspectors?

DECISION: Yes, within limitations.

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the March 25, 2003 meeting, and was reconsidered at the May 29 and June 18, 2003, meetings of the Commission, and the following opinion is issued.

The Commission has recently become aware that several regulatory boards within the Commonwealth hire inspectors, some full-time and some on a part-time basis, who are working, privately, in the profession which they regulate. The Commission believes that this situation presents potential conflicts of interest for the inspectors who are also working privately in the same field. See Advisory Opinions 99-3 and 00-72 enclosed.

The Executive Branch Code of Ethics (the "Code"), KRS 11A.020 states in part:

(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

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(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.

Regulatory board inspectors, whether full-time or part-time, are considered public servants and are subject to the conflict of interest provisions provided above. However, the Commission realizes the difficulty a board may have in employing inspectors on a part-time basis without allowing them also to practice in the profession for which they have been trained.

Thus, the Commission proposes a solution, with input from several regulatory Boards, that it believes will not present a conflict of interest for such inspectors. A regulatory board may hire as inspectors individuals employed in the profession, if the Executive Director (or Administrator) for the board inspects the businesses by which the inspectors are employed or which they own, and also provided the inspectors work privately only in non-competing areas; specifically, the inspectors should not own or work in a business, privately, within a county of any business they inspect.

Additionally, if an inspector wishes to be employed as an instructor by a school which trains students in the profession, he may do so only if his course instruction does not require specific approval by the regulatory board. If a school instructor must obtain approval from the regulatory board for the specific classes he wishes to teach, then he may not be hired as an inspector. Such approval presents a conflict for an employee of the board. See Advisory Opinion 02-35.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 99-3,
Advisory Opinion 00-72
Advisory Opinion 02-35