

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-34

October 16, 2003

- RE
- 1) May a state employee own more than a 5% interest of a group home that receives referrals through an agreement with the employee's state agency?
 - 2) May a state employee own more than a 5% interest of a group home that receives referrals through an agreement with a state agency other than the state agency for which the employee works?
- DECISION:
- 1) No.
 - 2) Yes, but must comply with the provisions of KRS 45A.340.

This opinion is in response to your request of August 15, 2003, for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 16, 2003 meeting of the Commission and the following opinion is issued.

You are employed as an Administrative Secretary in the Cabinet for Families and Children ("Families & Children").

You are interested in entering into a partnership to open a new Support Living Community Group Home of which you would have more than 5% ownership. You anticipate this group home would receive referrals through agreements with Hazelwood Health Facility in Louisville, a facility under the Cabinet for Health Services ("Health Services"). You state that at this time you and your potential partners are not entertaining the idea of receiving referrals through agreements with Families & Children, but that Families & Children could at some time be a potential source of referrals. Your position with Families & Children does not involve referring clients for placement, and you do not believe that the unit in which you work has anything to do with referring clients. You request an opinion as to whether or not your ownership in a group home with your present position with Families & Children presents a conflict of interest.

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KRS 11A.040(4) provides:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Although neither you, nor an entity of which you own an interest of more than 5%, may enjoy any part of a contract or agreement that is awarded by Families & Children for referrals, you (and the entity) are not prohibited from having an agreement with Health Services to receive referrals. Any such agreement between the group home and Health Services would be subject to KRS 45A.340, which requires such agreements to be competitively bid if they involve more than \$25 in funds.

If in the future the group home seeks placements or referrals from Families & Children through an agreement, you would need to either reduce your ownership stake in the group home below 5% or resign your current state employment in order to comply with KRS 11A.040(4).

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The Commission has also reviewed your request in light of KRS 11A.020(1)(a) and (d), which provide:

(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;

...

(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.

You should have no involvement, as part of your official duties for the Cabinet, with persons or businesses the group home seeks as customers. Furthermore, you should not be involved, as part of your official duties, in regulatory matters concerning entities with which the group home competes.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.