

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-46**

December 18, 2003

RE: May relatives of park employees sell products to park gift shop?

DECISION: Yes, provided employees abstain from purchasing discussions and decisions.

This opinion is issued in response to your November 25, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as a park management liaison for the Kentucky Department of Parks (the "Department") within the Tourism Cabinet. Recently, you became aware of two situations for which you request advice from the Commission.

In the first situation, a state park operates a gift shop on its premises and employs a gift shop manager who is responsible primarily for the overall operation of the gift shop, including the ordering of merchandise for resale. Occasionally, the gift shop manager allows the gift shop clerk to make purchasing decisions also. In the fall of 2002, the gift shop clerk procured for the gift shop homemade quilts from an individual. In July of 2003, the granddaughter of the individual who sells quilts to the gift shop married the gift shop clerk's son. The Department was concerned about a potential conflict of interest and removed the homemade quilts from the gift shop. You ask whether the park may sell the existing homemade quilts that it has in stock, and also whether the gift shop may procure new homemade quilts from the individual without causing a conflict of interest for the gift shop clerk.

In the second situation, the park employs a business manager who is responsible for all financial transactions of the park, including the payment of all bills for items bought for resale in the gift shop. The business manager also acts as the park manager, when the park manager is off

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the park and may make or influence purchasing decisions. You believe that the business manager also occasionally counts receipts for all the departments within the park, including the gift shop. The new park manager recently became aware that the gift shop was purchasing items for resale from the brother of the business manager. Due to a concern, again, about a potential conflict of interest, the park removed these items from the gift shop. You ask whether the park's decision to remove these items was proper, and whether the park should cease purchasing items from the business manager's brother.

KRS 11A.020(1) and (3) 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;

(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.

...

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission has had occasion to address requests similar to yours in other advisory opinions (copies of which are enclosed). In Advisory Opinion 96-19, the Commission advised that a state park may purchase products from a company, owned in part by the mother of the recreational program supervisor of the park, without causing a conflict because the employee has no responsibility concerning the park gift shop in his employment and he has no interest in the company selling products to the park. Additionally, in Advisory Opinion 97-18, the fact that the mother of the manager overseeing the Kentucky Department of Fish and Wildlife Resources' Wildlife Center, including the Kentucky Afield Gift Shop, was serving as a sales representative for a company from which the gift shop purchased products, did not present a conflict for the

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manager provided the manager abstain from all discussions and decisions pertaining to purchases from the company, and provided the gift shop supervisor under the manager's supervision report to another employee not under the manager's supervision, concerning matters involving the company.

Similarly, the Commission believes in both of the situations you have detailed that the park may purchase products from a relative of an employee of the park, provided the employee abstains from any involvement in gift shop purchasing discussions or decisions. Such abstention should be disclosed by the employee in writing and such purchasing decisions should be made by someone not under the supervision of the employee. In the first situation, the Commission believes that the existing quilts may be sold because the quilts were actually purchased for resale when no apparent conflict existed. Additionally, new quilts may be purchased for resale, provided neither the gift shop clerk, nor anyone under his supervision, has any future involvement in purchasing decisions of the quilts or similar merchandise.

In the second situation, again, a conflict of interest could be avoided if the business manager abstains from all gift shop procurement discussions and decisions and discloses such abstention in writing. The park manager should be responsible for such decisions, and the business manager should not make any such decisions, even when fulfilling the role of the park manager in his absence. Provided the business manager had no involvement in the initial decision by the park to purchase items from his brother, the Commission believes that the previously purchased items may be sold in the gift shop. If it is not feasible for the business manager to remove himself from gift shop purchasing discussions or decisions, then the Commission believes that the gift shop should not purchase products from the brother of the business manger for resale.

The Commission advises the park, however, that an appearance of a conflict may still exist for the gift shop clerk and the business manger even by abstaining from purchasing decisions. The park, in its on discretion, may wish not to sell the products if it wishes to avoid even the appearance of a conflict.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinions 96-19, 97-18