

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-50

December 18, 2003

RE: Guidance on Sharing of Confidential Information

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the December 18, 2003 meeting of the Commission and the following opinion is issued.

In November of 2003, a transition team was assembled to effect the orderly transfer of power from one gubernatorial administration to the next. The transition team includes a number of lobbyists who are registered to influence executive branch agencies and several individuals who have ownership interests in businesses that are regulated by the state. Some of the transition team members are charged with the task of gathering information about the various cabinets of state government in order to facilitate a smooth transition for the new administration. According to a recent news article, the individuals chosen for this task are those who understand the issues and roles of the various agencies and departments well enough to ask the right questions.

Some of the transition team members may acquire information in their interviews that also could benefit their own economic interests. The Commission is concerned about potential conflicts of interest that may arise for employees who are interviewed by the transition team members. Specifically, the Commission believes that if an employee is asked certain questions by a transition team member that would require the employee to provide confidential information, the employee may be put into a situation that would cause him to violate KRS 11A.040(1), which states:

- (1) A public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties.

This situation may also precipitate a violation of KRS 11A.020(1)(d) which states:

(1) No public servant, by himself or through others, shall knowingly:

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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.

The Commission believes that employees should not be required by their agency or appointing authority or asked by an incoming constitutional officer to provide confidential information to non-employees who may have private conflicts with the agency, such as owning a business that may have current regulatory issues with an agency, may be doing business with the agency, may be involved in litigation against the agency, or may be seeking to influence decisions of the agency, if the confidential information could lead to the furtherance of the non-employee's economic interests. In such a situation, an employee might perceive that complying with the law by refusing to disclose requested confidential information to non-employees having potential private conflicts may actually jeopardize that employee's job security or future advancement.

The Commission wishes to discourage any activity that would give rise to such scenarios and, should they arise, encourages employees to be cognizant of their duty under KRS 11A.

Sincerely,

Executive Branch Ethics Commission

By Chair: Joseph B. Helm, Jr.