

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-3**

February 20, 2004

RE: Does a state officer's service on various boards and councils cause a conflict of interest with regard to his state employment?

DECISION: No, provided he recuses himself and abstains from official action with respect to those entities.

This opinion is issued in response to your January 7, 2004, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the February 20, 2004, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The General Counsel for the Health and Family Services Cabinet (the "Cabinet") serves, as a private citizen, as a member of several advisory boards including the Advisory Board of the Lexington Public Library, the Friends of the Lexington Public Library, and the Navy League of the United States, Central Kentucky Council. You ask whether his membership on these boards would pose a conflict of interest under KRS 11A.005(1) and KRS 11A.020(1).

KRS 11A.005(1) states:

(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) 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.

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(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 addressed similar requests in the past. In Advisory Opinion 00-43, the Commission held that a public servant could serve on the board of directors of a non-profit foundation so long as he had no involvement with the entity as part of his official duty. See also Advisory Opinion 99-22.

You have also informed the Commission of the General Counsel's intention to recuse himself from any official action with regard to the entities mentioned above in the event such an issue should arise in the performance of his duties as a public servant. Thus, the Commission believes that the General Counsel does not need to resign his position on these boards, provided he abstains from issues that may come before the Cabinet involving these boards.

The Commission applauds the General Counsel's forethought in this matter, and also directs his attention to KRS 11A.020(3) above and KRS 11A.030, provided below:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;

(2) The effect of his participation on public confidence in the integrity of the executive branch;

(3) Whether his participation is likely to have any significant effect on the disposition of the matter;

(4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or

(5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession,

occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 00-43  
Advisory Opinion 99-22