

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-32
September 30, 2004

RE: May the Attorney General seek votes for school board candidate?

DECISION: Yes, provided the individuals contacted have no interests before the Office of the Attorney General.

This opinion is issued in response to your August 31, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 30, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You have recently received information that the Attorney General has recruited a candidate to run for a seat on a local school board. You also believe that he has made phone calls to voters in the district seeking votes for the candidate. You have had a conversation with a voter who expressed fear, and felt intimidated, when contacted by the Attorney General. You ask if such action by Attorney General, if true, violates the Executive Branch Code of Ethics.

KRS 11A.020(1)(d) provides:

(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.

The provisions in KRS 11A.020(1)(a) and (d) above prohibit public servants from using their official positions to benefit themselves or others privately. They also prohibit public

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servants' involvement in matters that pose a conflict between their private interests and their duties in the public interest. Thus, the Attorney General would be prohibited from contacting individuals and businesses that have interests before the Office of the Attorney General, or are regulated by or seeking business with the Office of the Attorney General in an attempt to influence them to run for office or to vote for a certain candidate.

Conversely, the Attorney General would not be prohibited from contacting individuals to run for seats on a local school board or from seeking votes from individuals, provided the individuals he contacts have no business or regulatory interests before the Office of the Attorney General. If the individuals have no interests before the Attorney General, no actual potential for conflict exists.

The Commission notes, however, that although the Attorney General is not prohibited by the code of ethics from such activity, the Attorney General should be independent and impartial in his official actions as provided in KRS 11A.005(1)(a) provided below. He should also be mindful that it is sometimes difficult for an elected official to make a clear distinction between his actions in his official capacity and his actions in his private capacity.

KRS 11A.005(1) provides:

- (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;

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: James S. Willhite