

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-2

May 27, 2005

RE Reconsideration of Advisory Opinion 04-14

DECISION: Uphold Original Opinion

This opinion is issued in response to your September 29, 2004 request for a reconsideration of Advisory Opinion 04-14 issued by the Executive Branch Ethics Commission (the "Commission") on August 5, 2004. This matter was reviewed at the December 17, 2004 and February 18, March 30, and May 27, 2005 meetings of the Commission and the following opinion is issued.

You state the relevant facts as follows. Although you do not have any fundamental issue of disagreement, you believe that in issuing Advisory Opinion 04-14, the Commission failed to understand the "federally related transaction" versus "non-federal" appraiser scope of work. Currently, only three individuals are licensed by the Kentucky Real Estate Appraisers Board (the "Board") as non-federal real property appraisers. You believe the reasons for this are: 1) the license is not recognized by an entity or group; 2) the license serves no purpose; 3) the Board has never created requirements or regulations for the license; and 4) there is no disciplinary action established for the license holder.

You state that you believe that 201 KAR 30:040, Section 1, provided below, is directly contrary to KRS 324A.050, also provided below.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."

324A.050 Grounds for refusal to reissue or renew certificate or license or for other disciplinary action -- Petition for reinstatement.

(1) The board may refuse to issue, refuse to renew, suspend, or revoke a certificate or license, reprimand, admonish, place on probation, or impose a fine up to two thousand dollars (\$2000) on a certificate holder or licensee, or any combination thereof, for any of the following reasons:

...

(j) Failing to observe one (1) or more of the Uniform Standards of Professional Appraisal Practice.

...

The standards referenced are the foundation of appraiser licensing and certification, and you believe the fact that non-federal property appraisers are not required to comply with such standards voids the Board's authority over such appraisers. You state that 201 KAR 30:020, Section 2 which lists the qualifications for licensure as a nonfederal property appraiser provides that licensed nonfederal real property appraisers are not required to meet the conditions established for certification or licensure as a real property appraiser. You also state that they are not required to complete annual continuing education.

Real estate appraiser licensure in Kentucky is a voluntary act. Individuals seeking certification as real property appraisers do so in Kentucky because regulatory agencies overseeing financial institutions require them to be licensed for lending purposes. There is no mandate or education requirement (beyond high school) in order to obtain a real estate appraiser license for non-federally related transactions.

You have heard that if a certified or licensed appraiser were performing his/her service outside a "federally related transaction" and did not use the license number or abbreviation, the Board would have no authority to act on an allegation of deficiency in the case. Therefore, you believe that if a client requested you to perform a compliance review of appraisal reports that

was not intended for lending purposes, and you advised the client that you could do so without using your license number or any reference to the fact that you are licensed or certified as a real property appraiser, the Board would have no authority to act over any action you take. You realize that this is a loophole in the law and are working to close it, but have been unsuccessful thus far.

In providing this information to the Commission, you wish to clear up the misconception you believe exists that a non-federal appraiser has any requirement for qualifications, standards, experience, or examination.

KRS 11A.020(1)(a) 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;

First, the Commission would like to point out that if any contradiction exists between a regulation and the law, the statutory law would take precedence over the regulation.

In its originally issued opinion, the Commission stated that a conflict of interest would exist if you were involved in regulating real property appraisers at the same time you are engaged in the private practice of performing real property appraisals or reviews of other appraisers' work (whether federally related or non-federal transactions). The Commission believes that this conflict still exists for you. Although the work you wish to perform for the city agency may be nonfederal, and thus may not, in practice, be regulated by the Board, a potential conflict remains. Reviewers of non-federal property appraisals are likely at times to perform appraisals for federally related transactions as well. In these instances, such individuals, though not regulated for the appraisals of non-federal transactions, would be regulated by the Board. A conflict of interest would exist for you therefore in the regulation of such individuals were you to compete with them privately to perform services for the city.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-2
May 27, 2005
Page Four

The intertwined nature, or dual roles, that a real property appraiser assumes in performing appraisals for both federally related and non-federally related transactions adds to the fact that a conflict would still exist.

Although the Commission understands that licensure for individuals involved in appraising property in non-federally related transactions does not require certain standards to be followed, it does not believe that the issue removes potential conflicts that may exist for the executive director to be involved in non-federally related appraisals or reviews of such appraisals.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Cynthia Stone