

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-11

March 30, 2005

RE: May PVA continue to serve in officer positions for realtor associations?

DECISION: Yes, provided realtors, as a profession, are not attempting to influence the Office of the PVA, and provided the PVA does not engage in lobbying activity.

This opinion is issued in response to your February 11, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You recently were appointed to the position of Property Valuation Administrator ("PVA") for Jefferson County. You ask the following questions:

- 1) *I serve as a trustee on the Greater Louisville Association of Realtors Political Action Committee ("GLARPAC"). GLARPAC contributes to local candidates, and advises the Kentucky Association of Realtors on selections for state-wide candidates. Does this pose a problem?*
- 2) *I am currently serving as Treasurer-elect of the Kentucky Association of Realtors ("KAR"). KAR has a political action committee and government affairs lobbying effort. Does this pose a problem?*
- 3) *What guidelines are used to regulate PVAs from serving as realtors, appraisers, or other realty related services?*

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.
- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of

the general public to conclude that he is using his official position to further his professional or private interest.

(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.

In response to your first two questions, please find enclosed Advisory Opinion 04-3, which provides guidance regarding a state officer's service on various advisory boards and councils as a private citizen. In that advisory opinion, the Commission stated that the officer did not need to resign his positions on the boards, provided he abstains, pursuant to KRS 11A.030, from issues that may come before the Cabinet involving the boards. The boards on which the officer wished to serve did not appear to cause inherent conflicts of interest for the officer.

On the other hand, in Advisory Opinion 93-38 (a copy of which is enclosed), the Commission found it a conflict for the Commissioner of Mines and Minerals to serve as a voting member of the board of directors of the Kentucky Mining Institute ("KMI"), since the KMI appeared to represent the interests of management over mine workers.

In your case, the Commission is unsure as to whether your service as a trustee or treasurer-elect for a realtor association will present an inherent conflict of interest for you. If realtors, as a profession, are in fact seeking to influence decisions of the Office of PVA, then your service on such boards may present a conflict for you.

If no potential for conflict exists, however, then the Commission believes that you are not prohibited from serving as a trustee for GLARPAC or as the treasurer-elect for KAR, provided you are not engaged in any activity that would require you to register as a lobbyist. Advisory Opinion 93-39 (a copy of which is enclosed) states that a public servant registered as a lobbyist creates a conflict of interest since KRS 11A.020(1)(b), provided above, prohibits an employee from influencing an agency decision or legislation that affects private interests.

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Further, if you wish to avoid any potential for, or appearance of, a conflict in your service as a PVA, the Commission advises that you may want to consider serving as a non-voting member of GLARPAC and KAR.

In response to your third question, the Commission refers you to Advisory Opinions 92-10, 93-24, 97-4, 98-11 and 00-40, which were sent to you previously.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 04-3
Advisory Opinion 93-38
Advisory Opinion 93-39