

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-22

May 27, 2005

- RE: 1) May a Property Valuation Administrator (PVA) perform real estate appraisals within the county where he is a PVA?
 2) May PVA serve as broker for sales associates who list and sell real estate in the county where the broker is the PVA?

- DECISION: 1) No, but the PVA could perform such appraisals outside of his own county.
 2) No, but the PVA could serve as broker for sales associates who list and sell real estate in another county.

This opinion is in response to your March 22, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 27, 2005 meeting of the Commission and the following opinion is issued.

You ask the following questions:

- 1) *Can a Property Valuation Assessor (PVA) who has an appraisal license perform real estate appraisals for lenders/others within the county where he/she is a PVA?*
- 2) *If a PVA has a realtor's brokers license, can his/her sales associates list and sell real estate in the county where the broker is the PVA?*

Pertinent statutory language that provides guidance on this matter follows:

KRS 11A.005(1):

- (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):

- (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.

KRS 11A.040(5):

- (5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

PVAs, while state officials, are locally elected and charged with appraising all property, both real and personal, that lies within their own counties. The Commission therefore believes that a conflict of interest would exist for a PVA to perform real estate appraisals privately, for

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compensation, for lenders or others within their home counties. As provided above in KRS 11A.040(5), employees may not accept additional compensation for performance of their official duties unless they have prior approval of the Commission. Since the PVA's job responsibilities include appraisal of all property within the county, he may not provide appraisal services for such property, for compensation, when he is required to appraise such property as part of his official duties for the state. See Advisory Opinion 99-29, a copy of which is enclosed.

Such a conflict would not exist, however, if the PVA performed appraisals outside of their own jurisdiction. Still, the PVA should take care not to use his official position in any way that would give him an advantage in his private business, or to conduct any appraisal business on state time or property, including telephone calls that relate to conducting appraisals privately.

Likewise, in regard to your second question, it is the opinion of the Commission that a conflict of interest would exist for the PVA, whose duty it is to appraise property within his county, to market such property, either personally or through sales associates, as part of his private business through which he would receive a financial gain based on the value or selling price of the property. (This issue was previously addressed in Advisory Opinion 98-11, a copy of which is enclosed.)

Such authority to value property that the PVA is attempting to sell, either directly or indirectly, could give the PVA an advantage over the general public. Again, this would not prohibit the PVA or his sales associates from listing and selling real estate in other counties, as long as the PVA took care not to use his official position in any way that would give him, or his sales associates, an advantage in this private business, or to conduct any real estate business on state time or property, including telephone calls that relate to the real estate business.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 98-11
Advisory Opinion 99-29