

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-4

April 10, 2006

RE: May supervisor use foster family for personal childcare services?

DECISION: Yes, within limitations.

This opinion is issued in response to your March 2, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 10, 2006 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as an office supervisor for the Department of Community Based Services (the "Department") within the Cabinet for Health and Family Services. You currently supervise the recruitment and certification workers for approved foster and adoptive families contracted by the state.

You also are a new mother and are seeking childcare arrangements. You would like to use an approved foster family for childcare, but want to ascertain that there is no impropriety in doing so. You currently are not the worker for this foster family, nor do you currently supervise the worker for this family. However, in the past, you have been the worker for this family. You state that you would be paying a fair value for the childcare, so the services provided to you would not be a "gift."

You ask for an advisory opinion that will provide guidance for any worker or supervisor in the Department who wishes to use approved foster families for childcare.

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

...

(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.

Although there does not appear to be a direct prohibition against an employee of the Department using foster care families for personal childcare services, the Commission envisions situations that may cause potential conflicts for those employees or supervisors. Thus, the Commission recommends that any employee or supervisor of the Department, who wishes to use an approved foster care family for childcare, abstain from any involvement in the approval, inspection, or worker responsibilities of that foster care family. Such abstention should be in writing pursuant to KRS 11A.020 (3) provided below.

(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 also recommends that your agency adopt an internal policy to require an employee or supervisor to abstain for a reasonable period of time (six months, one year, etc.) from using a foster family for personal childcare use if the employee or supervisor as part of his official duty had direct involvement with the family in the past.

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Thus, you are not prohibited from using a foster care family for your personal child care service, provided you do not supervise or have any contact with employees within the Department who are responsible for the inspecting, approving, or working with the foster family whom you wish to use for childcare services, and provided a reasonable amount of time has elapsed since you worked with the foster family. Further, you should pay the foster care family a fair value for such services, as you have indicated your intent to do so.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb