

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 06-10**  
June 16, 2006

RE: May coal company lease coal from mine inspector?

DECISION: Yes, if inspector abstains from inspections of the coal company.

This opinion is issued in response to your April 5, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 2006 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You represent a coal company in west Kentucky that operates an underground coal mine. The coal company has recently learned that one of the tracts that it intends to mine (through a lease agreement) is owned by a surface coal mine inspector who works for the Department of Natural Resources (the "Department"). The inspector is responsible for inspecting surface operations owned by the coal company, but does not inspect the underground mine that the coal company seeks to mine, and which is owned by the inspector.

The coal company is aware that a lease directly with the inspector could create a conflict of interest for the inspector, and thus the coal company seeks a way to lease the coal from the inspector without running afoul of law or policy. Accordingly, you have several proposals for a solution, in all of which the lease would be identical to all other leases in the coal field, with no more or less favorable treatment than any other lessor. You ask the following in regard to your proposals.

1. *Is the mine inspector permitted to lease his coal directly to us without violating any law or conflicts of interest policy?*
2. *If the answer to the first question is "no," can the inspector transfer the property to a trust and have the trust enter into the lease? If so, may the inspector be a beneficiary of the trust? May his wife be a beneficiary of the trust? May the inspector serve as trustee? May his wife serve as a trustee? In short, how should such a trust be structured?*

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3. *Is the inspector required to change his work duties so that he does not inspect any coal operations of the company that I represent (and instead inspect operations conducted only by other companies)?*

If none of the possibilities that you have suggested are permissible, you ask for a suggested approach which would allow the company to lease coal owned by the mine inspector without creating a conflict for him. At the same time, you do not want the solution to be so burdensome that the inspector and his wife are not permitted to receive royalties in the same manner as all of their neighbors who have already leased their land to the coal company.

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

...

(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.

The inspector is required, as part of his official duty for the Department, to inspect the coal company. Although the inspections will not be of his own property, the inspector is still in a position to influence agency decisions concerning the coal company that seeks to contract with him for coal mining. If the coal inspector were to enter into a contract with the coal company to allow them to mine his property, a substantial conflict would exist between his duties as an inspector and his interest in the contract with the coal company.

Accordingly, if the inspector wishes to have such an agreement with the coal company, he should abstain from any inspections of the coal company, as part of his official duty. Such abstention should be in writing, pursuant to KRS 11A.020(3) provided below.

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(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.

Further, no one under the inspector's supervision, if any, should be involved in any inspection of the coal company, and he should take great care not to discuss with other mine inspectors any matters concerning the coal company.

If it is not possible for the inspector and those under his supervision to abstain from such inspections of the coal company, then in order to avoid a conflict of interest, he should not enter into an agreement with the coal company. Transferring the property to a trust will not remove the conflict for the inspector if he or his spouse still has an interest in the trust. Advisory Opinions 95-38 and 01-8 are enclosed for your further guidance.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 95-38  
Advisory Opinion 01-8