

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-12

June 16, 2006

RE: May board members provide pre-licensing and continuing education courses for applicants and licensees?

DECISION: Yes; however, board members are encouraged to adopt an internal code of ethics to prevent conflicts of interest.

This opinion is issued in response to your April 18, 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 following relevant facts as follows. Pursuant to KRS 198B.700-738, the Kentucky Board of Home Inspectors (the "Board") sets the requirements for licensure as a home inspector in the state of Kentucky. Thus, the Board sets certain requirements for pre-licensing courses as well as continuing education that applicants and licensees must meet. The Board also approves the providers of such courses.

A number of Board members are interested in teaching and/or providing the pre-licensing and continuing education courses. This raises some conflict of interest concerns related to the initial approval of the course provider if a Board member owns or is employed by the provider. Further, you question the propriety of a sitting Board member receiving compensation as an owner or employer of such a provider. Accordingly, you request an opinion as to:

- (1) *Whether a Board member may simply abstain from voting on the approval of a course provider with which the member may be affiliated; and*
- (2) *Whether a Board member can receive compensation either as an owner or instructor of a course provider, or should a Board member resign from the board under those circumstances.*

KRS 11A.020(1) and (2) 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.

The Commission concluded in Advisory Opinion 97-26 (a copy of which is enclosed) that because a board member of the State Board of Registration for Professional Engineers and Land Surveyors is not under the jurisdiction of the Executive Branch Code of Ethics, the member is not prohibited from conducting continuing education seminars for profit. However, the Commission also stated that if the member presents seminars for profit or honoraria that also are approved or sponsored by the State Board of Registration for Professional Engineers and Land Surveyors, it will tend to damage public confidence in the independence and impartiality of the agency in sponsoring or approving the continuing education classes.

Furthermore, in 2004, the Commission encouraged an initiative for members of state boards and commissions to take a leadership role in the arena of governmental ethics and adopt a "model code of ethics" (a copy of which is enclosed) for the members of its board or commission. The "model code," among other areas, provides guidance for board members in situations where potential conflicts of interest may exist such as the one you have mentioned above.

Although not legally prohibited from providing a course for the Board or owning a company that provides courses, such situations by Board members may present circumstances of actual or perceived conflicts of interest for the members. Thus, the Commission believes that the Board members would be well-guided to adopt an internal "model code of ethics" similar to the attachment and follow its guidance in such situations that come before the Board. Pursuant to

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the attached model code, members would disclose any potential conflicts of interest for them that come before the Board and abstain from voting on such matters. Further, members would be prohibited from having any kind of a contract or agreement with the Board to provide services.

The Commission requests, if an internal code of ethics is adopted by the Board members, that you notify it upon such adoption.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 97-26
Model Code of Ethics
Advisory Opinion 00-60