

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-11**  
June 1, 2007

**RE:** Guidance for Ethical Behavior in Personnel Hiring Process

This opinion is issued by the Executive Branch Ethics Commission (the "Commission") upon its own motion. This matter was reviewed at the June 16 and October 20, 2006, and June 1, 2007, meetings of the Commission and the following opinion is issued.

As a result of several recent investigations, the Commission wishes to advise public servants regarding hiring policies and procedures within the executive branch. The Commission attempts to provide guidance through this opinion.

Executive branch officials and employees are authorized to implement statutorily mandated hiring procedures within the executive branch of state government. With this authority comes the expectation that officials and employees will exhibit high ethical standards in the public's interest, rather than for personal self-interest, or political interests. Many laws exist to provide procedures for the hiring and dismissing of employees within the executive branch. (KRS Chapter 18A) These laws, however, merely provide a minimum standard to follow.

As public servants, officials and employees are faced with many types of ethical dilemmas that involve situations where doing the "right thing" may be a significant personal cost to the employee or his agency. Being ethical means doing the right thing for the benefit of the entire state regardless of personal costs. Other types of ethical quandaries involve situations in which there are two conflicting sets of "right" values, where both actions may be legal, but one action may be more ethical. In these cases, the ethical path may not be as easy to follow. Officials and employees should consider which path or course of actions serves the interests of the Commonwealth as a whole, and which action better promotes public confidence in the integrity of government. This is further corroborated by KRS 11A.005(1) and 11A.020(1)-(3), provided below:

KRS 11A.005:

- (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) 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.

Further, KRS 11A.030 provides guidance for public servants in decision-making situations:

In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:

- (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
- (2) The effect of his participation on public confidence in the integrity of the executive branch;

- (3) Whether his participation is likely to have any significant effect on the disposition of the matter;
- (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
- (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

The Commission believes that all hiring procedures within state government should be conducted in a fair and impartial manner. Potential employees should not be shown favoritism or discrimination, or given an advantage or disadvantage, based on their political views, but rather should be employed because they are the most qualified or well suited for the position. Although a hiring decision may be subjective, if pre-selection of employees based on political recommendations is practiced, then all potential candidates are not considered equally, and the best candidate for the position may not be selected.

Processes have been statutorily and administratively established for the employment of individuals within the executive branch. These processes should not be circumvented in order to provide preferential treatment for certain individuals. Regardless of what biases may have existed in the past, the Commission believes that all state officials and employees should seek to act in an impartial manner when tasked with employment responsibilities.

Furthermore, as provided in Advisory Opinion 03-8 (a copy of which is enclosed), executive branch officials and employees within the Office of the Governor should not influence other state agencies regarding hiring practices in derogation of the state at large. Circumventing established processes of government which have been established by law or regulation is in derogation of the state at large. Specifically, when high-level officials (executive or legislative) forward names of individuals, for employment, to agency employees who are responsible for hiring, with the recommendation of placing such individuals in positions somewhere within the agency, established processes may appear to be circumvented. Because of the source of the recommendations, employees responsible for hiring may feel pressure or an obligation to place such individuals in positions. Such "preselection" of individuals for positions prior to obtaining personnel registers and conducting interviews circumvents the established hiring process and consequently may violate the provisions in KRS Chapter 11A, quoted above.

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 07-11  
June 1, 2007  
Page Four

Employees within the Office of the Governor, and other high level officials, are not prohibited from providing information to individuals seeking employment regarding how to apply for positions within state government and what agencies to contact. However, such officials and employees should not use their positions to give any individual an advantage over others, without personal knowledge of the individual's pertinent qualifications.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

---

By Chair: John A. Webb

Enclosures: Advisory Opinion 03-8