

Executive Branch Ethics Commission
ADVISORY OPINION 07-13
May 10, 2007

RE: May daughter of director accept summer employment with vendor of agency by which director is employed?

DECISION: Yes, however, director should abstain in certain matters, when necessary.

This opinion is issued in response to your March 13, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 10, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. You serve as the Director of the Division of Professional Learning and Assessment for the Education Professional Standards Board ("EPSB"). Your daughter is a senior in high school and is entertaining the idea of pursuing a career in writing. Recently, your daughter was offered a summer position with a Louisville company that produces online classes for a variety of clients nationwide. Your daughter would like to gain some experience in the field of writing and accept this opportunity to assist her in her career decision. However, you have been told that an ethical conflict may exist for you because the EPSB contracts with the company to develop the Kentucky Teacher Internship Program ("KTIP") online training course, which is utilized by the division you direct. You collaborate with contract staff on the maintenance of completed online courses and the completion of online modules. However, you do not have the responsibility or authority to enter into a contract with the company.

Before your daughter accepts this opportunity, you request an opinion from the Commission regarding this potential conflict. You state that monetary compensation is not the goal of your daughter's desire to write for the company, but she is seeking experience that will guide her career decision. She is willing to decline the compensation from the company if the compensation is a barrier to this opportunity.

KRS 11A.020(1) and (3) 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.
 - ...
- (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, below, provides guidance when considering whether to abstain from involvement in certain matters.

KRS 11A.030 Considerations in determination to abstain from action on official decision -- Advisory opinion. 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.

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Provided you have not contacted the company on behalf of your daughter, and provided you have not used your official position in any way to give an advantage to the company, the Commission believes that your daughter may accept summer employment with compensation from the company in order to gain needed experience in the writing field. If your daughter does accept such employment, you should review the provisions above in determining whether to refrain from involvement in matters relating to the company as part of your official duties for the EPSB.

If it is not feasible for you to abstain when necessary, then a potential for a conflict will exist, and the Commission advises in order to avoid an appearance of a conflict that your daughter not accept compensation from the company. The potential for conflict diminishes if your daughter refrains from receiving compensation from the company, although it is not prohibited if you take the necessary precautions as delineated above. Also, see Advisory Opinion 98-1, enclosed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Vice Chair: Cynthia C. Stone

Enclosure: Advisory Opinion 98-1