

Executive Branch Ethics Commission
ADVISORY OPINION 07-26
October 19, 2007

RE: May a Property Valuation Administrator employee who is also a licensed realtor accept referral fees?

DECISION: Yes, within limitations.

This opinion is issued in response to your August 9, 2007, request for an Advisory Opinion from the Executive Branch Ethics Commission (“Commission”). This matter was reviewed at the August 24 and October 19, 2007, meetings of the Commission and the following opinion is issued.

You are employed in a local Property Valuation Administrator’s (“PVA”) office and also are a licensed realtor. You do not plan to sell real estate in your county of employ, but ask whether you may accept referral fees for referring individuals to other realtors within your own county even though you are an employee of the county PVA office.

KRS 11A.020(1) provides:

- 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.

The Commission believes that a potential conflict of interest may exist for employees of a PVA office who, as a part of their official duties, are involved in valuing property and also market such property as part of their private business and thus receive a financial gain based on the value or selling price of the property. Such authority to value property which the employee is attempting to buy or sell privately for themselves or others may give the employee an advantage over the general public. See Advisory Opinions 98-11 and 05-22.

However, if you will not have any involvement in the buying, selling, or any type of marketing or recommendation of property, other than to refer a client to another realtor and receive a fee based on that referral, the Commission does not believe that such action will present an actual conflict between your private interest and your duty in the public interest, even in your county of employment. Although the referral fee that you receive may be based on a percentage of the sale price of a property, by not having any involvement in the buying or selling of the property, an actual conflict is avoided.

Moreover, you should not conduct any such business on state time or property, including cell or other phone calls that relate to said real estate business. Nor should you use your office address for any private business correspondence. The commission cautions you to take great care not to use your official position in any way that would give you an advantage in your private business.

No private referrals should be made from the Office of the PVA. If you respond to any inquiries made to the PVA office regarding information on local realtors, such responses should be handled as part of your official duty, and you should not benefit privately in any way from providing such referrals from the PVA office.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Attachment: Advisory Opinion 98-11
Advisory Opinion 05-22